

**ATTACHMENT B**

**ATTORNEY DISCIPLINE TASK FORCE**

**PROPOSAL TO AMEND**

**RULES 46-74, 75, 77, and 78, RULES OF THE SUPREME COURT**

**V. Regulation of the Practice of Law**

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## RULES OF THE SUPREME COURT

### V. Regulation of the Practice of Law

#### E. Discipline and Disability Administration; General Provisions

##### Rule 46. Jurisdiction in Discipline and Disability Matters; Definitions

**(a) Lawyers Admitted to Practice.** Any lawyer admitted to practice law in this state is subject to the disciplinary and disability jurisdiction of this court and the state bar. Any false statement or misrepresentation made by an applicant for admission to the practice of law which is not discovered until after the applicant is admitted may serve as an independent ground for the imposition of discipline under these rules and as an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for admission to the practice of law may result in revocation of the member's admission to the state bar, pursuant to Rule 33(b) of these rules.

**(b) Non-members.** A non-member engaged in the practice of law in the State of Arizona or specially admitted to practice for a particular proceeding before any court in the State of Arizona, a non-lawyer permitted to appear in such capacity, a foreign legal consultant as defined in Rule 38(b), or in-house counsel as defined in, and registered pursuant to, Rule 38(i), submits himself or herself to the disciplinary and disability jurisdiction of this court in accordance with these rules.

**(c) Former Judges.** A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the state bar not only for that person's conduct as a lawyer, but also for misconduct that occurred while serving as a judge that would have been grounds for lawyer discipline, provided that the misconduct was not the subject of a judicial discipline proceeding as to which there has been a final determination by the court.

**(d) Incumbent Judges.** Upon removal or resignation from office of an incumbent judge as the result of a judicial discipline or disability proceeding, the court shall afford the state bar and the judge an opportunity to submit to the court a recommendation whether lawyer discipline or disability status should be imposed based on the record in the judicial proceeding, and if so, the extent thereof.

**(e) Disbarred Lawyers.** Upon order or judgment of the court disbarring a member, the member shall no longer be entitled to the rights and privileges of a lawyer, but shall remain subject to the jurisdiction of this court with respect to matters occurring prior to the disbarment.

**(f) Definitions.** Where the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers:

1. "Acting presiding disciplinary judge" means an attorney member of a hearing panel designated to serve when the presiding disciplinary judge is disqualified or unable to serve in any matter.

2. "Bar counsel" means staff counsel employed by the state bar or volunteer counsel appointed to represent the state bar in discipline and other proceedings. "Chief bar counsel" means that person employed by the state bar to administer the discipline and disability system under the direction of the executive director.

3. "Board" means the Board of Governors of the State Bar of Arizona.

4. "Charge" means any allegation or other information of misconduct or incapacity that comes to the attention of the state bar.

5. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona.

6. "Complainant" means a person who initiates a charge against a lawyer or later joins in a charge to the state bar regarding the conduct of a lawyer. The complainant will be provided information as set forth in Rule 53, unless specifically waived by the complainant. The state bar or any bar counsel may be complainant.

7. "Complaint" means a formal complaint prepared and filed with the disciplinary clerk pursuant to these rules.

8. "Costs" means all sums taxable as such in a civil action.

9. "Court" means Supreme Court of Arizona.

10. "Discipline" means those sanctions and limitations on members and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.

11. "Disciplinary clerk" means an individual designated by the court to be the custodian of the record in all discipline, disability, and reinstatement proceedings before the attorney discipline probable cause committee, the presiding disciplinary judge, and the hearing panel, who shall maintain the records according to the common practice of clerks of court.

12. "Discipline proceeding" and "disability proceeding" mean any action involving a respondent pursuant to the rules relating thereto.

13. "Expenses" means all obligations in money, other than costs, necessarily incurred by the state bar, the committee, the hearing panel, the disciplinary clerk's and the presiding disciplinary judge's offices in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of committee members, hearing panel members, bar counsel or staff, charges of expert witnesses, charges of certified reporters and all other direct, provable expenses.

14. "Filing" means delivery of the document or exhibit to the disciplinary clerk or clerk of the court, as appropriate, for inclusion in the record, or delivery of the document or exhibit to the state bar for inclusion in the state bar file, as provided for in these rules. All papers, whether filed electronically or in hard copy, shall comply with the requirements of Rule 32(j).

15. "Hearing panel" means the three-member panel that conducts hearings on the merits of complaints seeking disciplinary action against a lawyer.

16. "Member" means member of the state bar, the classifications of which shall be as set forth in this rule.

17. "Misconduct" means any conduct sanctionable under these rules, including unprofessional conduct as defined in Rule 31(a)(2)(E) or conduct that is eligible for diversion.

18. "Non-member" means a person licensed to practice law in a state or possession of the United States or a non-lawyer permitted to appear in such capacity, but who is not a member of the state bar.

19. "Presiding disciplinary judge" means the judicial officer appointed by the court to carry out the functions specified in these rules.

20. "Record," for purposes of these rules, means the complaint and accompanying committee's order of probable cause, or other document that commences formal discipline, disability or reinstatement proceedings, or contempt proceedings and every later-filed document or exhibit. Certified transcripts shall be submitted to the court when an appeal is taken as part of the record unless the court directs otherwise in a specific case.

21. "Respondent" means a member or non-member against whom a discipline or disability proceeding has been commenced.

22. "Settlement officer" means either a paid or a volunteer attorney who presides over a settlement conference.

23. "State bar" means the State Bar of Arizona, created by rule of this court.

24. "State bar file" means the original of every document, recording and transcript of testimony or exhibit created or received by the state bar in relation to a discipline, disability or reinstatement proceeding, but shall not include work product of the state bar or state bar staff, or information protected by any legally recognized privilege in Arizona.

## **Rule 47. General Procedural Matters**

**(a) Pleadings.** There may be a complaint, an answer, an amended complaint, and an answer to an amended complaint. No other pleadings may be filed unless as permitted by these rules or otherwise permitted by the presiding disciplinary judge, the hearing panel, or the court.

1. *General Rules of Pleading.* Pleadings filed shall conform to the requirements of Rule 8(b), (d), (e) and (f), Ariz. R. Civ. P., as may be applicable to these proceedings.

2. *Form and Signing of Pleading.* In addition to the requirements of these rules, pleadings filed shall also conform to the requirements of Rule 10(b), (c) and (d) and Rule 11(a), Ariz. R. Civ. P., as may be applicable to these proceedings.

### **(b) Amendment of Pleadings.**

1. *To Conform To Evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, but failure so to amend does not affect the result of the hearing on these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the hearing panel may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the hearing panel that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The hearing panel may grant a continuance to enable the objecting party to meet such evidence.

2. *Pre-Hearing Amendments.* Bar counsel may file an amended complaint, without leave of the presiding disciplinary judge, any time prior to the time an answer is filed. Prior to the commencement of a hearing on the merits, the complaint may be amended with leave of the presiding disciplinary judge, who may permit the inclusion of additional charges. The respondent shall file a response within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period is longer. In the discretion of the presiding disciplinary judge, the hearing date may be continued to provide the respondent with adequate time to meet the factual allegations and alleged ethical violations first presented in the amended pleading.

**(c) Service.** Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the rules of civil procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

(1) *Service of Complaint.* Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule 32(c)(3). Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar. When service of the complaint is made by mail, the state bar shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

(2) *Service of Subpoena.* Subpoenas shall be personally served on the parties and the person under subpoena. In the case of a respondent under subpoena, if personal service proves impracticable, service may be accomplished in such manner as the presiding disciplinary judge, upon motion and without notice, may direct, including by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent to the state bar's membership records department pursuant to Rule 32(c)(3). Whenever the presiding disciplinary judge allows an alternate form of service pursuant to this paragraph, reasonable efforts shall be undertaken by the party making service to assure that the respondent receives actual notice.

**(d) Motions.** Procedural or substantive motions may be filed and must comply with the requirements of Rule 7.1(a), Rule 12(b), (c), (e) and (f), and Rule 56, Ariz. R. Civ. P., as may be applicable to these proceedings. Motions for sanctions are governed by Rule 58(f)(3) of these rules. All motion practice shall be subject to the provisions of Rule 7.1(b), Ariz.R.Civ.P.

**(e) Discovery.** Discovery shall be governed as set forth in Rule 58(e) and (f).

**(f) Administration of Oaths.** Oaths and affirmations in discipline, disability and reinstatement proceedings shall be administered by the presiding disciplinary judge, or certified reporter.

**(g) Transcript of Hearings.** The disciplinary clerk shall cause a verbatim record to be made of all evidentiary hearings and oral arguments, or of other proceedings upon request of the presiding disciplinary judge or a party. Testimony recorded by electronic means is admissible for the same purposes as transcripts provided by certified reporters. Any party may request a certified reporter at that party's own expense. Upon request of the presiding disciplinary judge or the hearing panel, the disciplinary clerk shall obtain and file a copy of the written transcript of the hearing and serve a copy on the state bar and respondent. A party requesting a transcript shall arrange for transcription at the party's expense. If the record was not made by



a certified reporter, the disciplinary clerk shall provide a copy of the verbatim recording to the party. The party shall file a copy of the transcript with the disciplinary clerk and serve a copy on the opposing party. Transcripts shall be prepared in accordance with Rule 30. The party shall file a copy of the transcript with the disciplinary clerk and serve a copy on the opposing party. The costs of the services of a certified reporter and transcripts may be included in the costs of adjudication that are assessed against the respondent pursuant to Rule 60(b).

**(h) Subpoena Power.** Except as otherwise provided, the disciplinary clerk shall have the power to issue subpoenas. Service of subpoenas shall be as set forth in paragraph (c)(2) of this rule.

1. *Investigative Subpoenas.* During the course of an investigation and prior to the filing of a complaint, the state bar may obtain issuance of a subpoena by filing a written request with the chief bar counsel or the chair or vice-chair of the committee, containing a statement of facts to support the requested subpoena. A copy of the request and subpoena shall be provided to respondent or respondent's counsel, if represented. If chief bar counsel or the chair or vice-chair of the committee approves the request, chief bar counsel or the chair or vice-chair of the committee shall issue the subpoena. The subpoena may compel a respondent to provide a written response to the allegations, as required in Rule 55(b)(1), the attendance of witnesses and the production of pertinent books, papers and documents, and answers to written interrogatories. If a deposition upon subpoena is required as result of a respondent's failure to comply with bar counsel's request for information, the deposition may be conducted at any place within the State of Arizona and the respondent shall be liable for the costs of the deposition.

2. *Prehearing and Hearing Subpoenas.* After filing of a complaint, the parties may prepare subpoenas as needed in the form set forth in paragraph (i) of this rule and file the subpoenas with the disciplinary clerk.

3. *Objection to Issuance of Subpoena.* Upon receipt of a request for subpoena, a party or a non-party who has been subpoenaed may, within five (5) days of service by first class mail, file a written objection with the committee in the case of a request for an investigative subpoena, or with the presiding disciplinary judge in the case of a hearing subpoena. The chair of the committee or presiding disciplinary judge, as appropriate, may rule on the objection without oral argument.

4. *Contempt.* When a person subpoenaed to provide a written response to a request for information, to appear and give testimony, or to produce books, papers or documents as required by the subpoena, refuses to provide a written response, to appear or testify, or to answer any relevant or proper questions, the person may be subject to civil contempt proceedings.

A. *Request for Order to Show Cause.* A party may file with the presiding disciplinary judge a verified notice and request for order to show cause alleging that a person

under subpoena has failed to comply with the subpoena. The presiding disciplinary judge may enter an order to show cause directing the person alleged to be in contempt to appear before the judge at a specified time and place and then and there show cause why he or she should not be held in contempt. In the case of a respondent alleged to have failed to comply with a subpoena, the order shall indicate that a finding of contempt could result in a sanction of summary suspension of his or her license to practice law.

*B. Findings and Possible Sanctions.* If it appears to the presiding disciplinary judge that the subpoena was regularly issued and no good cause is shown for the failure to comply with a subpoena, the presiding disciplinary judge may issue an order holding the person in contempt and impose reasonable sanctions to ensure compliance with the subpoena. In the case of a respondent found to be in contempt under these proceedings, the presiding disciplinary judge may, among other possible sanctions, summarily suspend the respondent from the practice of law until the respondent complies with the subpoena or order. An order of summary suspension issued pursuant to this rule shall have the same effect as an order of interim suspension issued by the court, as set forth in Rule 61(d). Upon verification of compliance, the presiding disciplinary judge shall enter an order of reinstatement. Nothing in this rule shall be construed to preclude allegations or findings of a violation of ER 8.1, Rule 54 of these rules, or any other applicable rule regardless of whether contempt is sought or found.

5. *Quashing Subpoena.* Any attack on the validity of a subpoena issued shall be heard and determined by the presiding disciplinary judge.

6. *Deposition in Foreign Jurisdiction.* Depositions may be taken outside the State of Arizona, and a copy of the order of the presiding disciplinary judge, certified by the disciplinary clerk, shall be sufficient authority to authorize the taking of a deposition. If the deponent will not voluntarily appear, the subpoena may be enforced to the full extent and in the manner provided by the law of the jurisdiction where the deposition is to be taken.

7. *Subpoena upon Interrogatories.* A subpoena may require a person to submit written answers to written interrogatories. The answers shall be made under oath, signed by the witness, and served within the time and at the place stated in the subpoena.

**(i) Subpoenas; Form.**

1. Subpoenas for the attendance of witnesses and the production of books and records shall be in substantially the following form:

BEFORE THE PRESIDING DISCIPLINARY JUDGE

(THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE; CHIEF BAR COUNSEL)

In the Matter of a Member	)	Bar No. _____
of the State Bar of Arizona	)	SUBPOENA or
_____	)	SUBPOENA DUCES TECUM

STATE OF ARIZONA

TO: (Name of Witness)

You are hereby directed to appear and attend before (Bar Counsel of the State Bar of Arizona) (Respondent and/or Respondent's Counsel) (the Attorney Discipline Probable Cause Committee) (Presiding Disciplinary Judge) of the Supreme Court of Arizona, at (address), in (city), \_\_\_\_\_ County on (day), \_\_\_\_ (date) \_\_\_\_\_, 20 \_\_\_\_, at the hour of \_\_\_\_ o' clock \_\_\_\_\_. m., then and there to testify in the above entitled matter.

(If the production of books, etc., is desired, add "and to bring with you the following:" and describe same).

BE WARNED THAT for failure to appear and attend as herein required, you will be deemed to be in contempt and answerable as provided by these rules.

By order of (the Attorney Discipline Probable Cause Committee) (the Presiding Disciplinary Judge) of the Supreme Court of Arizona.

Issued on \_\_\_\_\_, 20 \_\_\_\_ at \_\_\_\_\_, Arizona.

\_\_\_\_\_  
 (Name)  
 (Presiding Disciplinary Judge)  
 (Chair, Attorney Regulation Committee; Chief Bar Counsel)  
 Whose Address is

\_\_\_\_\_  
 \_\_\_\_\_, Arizona

#### **YOUR DUTIES IN RESPONDING TO THIS SUBPOENA**

If this subpoena asks you to produce and permit inspection and copying of designated books, papers, documents, tangible things, or the inspection of premises, you need not appear to produce the items unless the subpoena states

that you must appear for a deposition, hearing or trial. See Rule 45(c)(2)(A) of the Arizona Rules of Civil Procedure.

You have the duty to produce the documents requested as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in this subpoena. See rule 45(d)(1) of the Arizona Rules of Civil Procedure.

### **YOUR RIGHT TO OBJECT**

The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The presiding disciplinary judge enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within fourteen (14) days after it is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena.

If you object because you claim the information requested is privileged or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the documents, communication or item not produced so that the demanding party can contest the claim. See Rule 45(d)(2) of the Arizona Rules of Civil Procedure.

If you object to the subpoena in writing you do not need to comply with the subpoena until you are ordered to do so. It will be up to the party or attorney serving the subpoena to seek an order from the presiding disciplinary judge to compel you to provide the documents or inspection requested, after providing notice to you.

If you are not a party to the litigation, or an officer of a party, the presiding disciplinary judge may issue an order to protect you from any significant expense resulting from the inspection and copying commanded.

You may also file a motion with the presiding disciplinary judge to quash or modify the subpoena if the subpoena:

- (i) does not provide a reasonable time for compliance;

(ii) requires a non-party or officer of a party to travel to a county different from the county where the person resides or does business in person; or to travel to a county different from where the subpoenas was served; or to travel to a place farther than 40 miles from the place of service; or to travel to a place different from any other convenient place fixed by an order of the presiding disciplinary judge, except that a subpoena for you to appear and testify at trial can command you to travel from any place within the state;

(iii) requires the disclosure of privileged or protected information and no waiver or exception applies;

(iv) subjects you to an undue burden. See Rule 45(c)(3)(A) of the Arizona Rules of Civil Procedure.

If this subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial trade information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial travel expense;

the presiding disciplinary judge may either quash or modify the subpoena, or order you to appear or produce documents only upon specified conditions, if the party who served the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that your will be reasonably compensated. See Rule 45(c)(3)(B) of the Arizona Rules of Civil Procedure.

2. The subpoena may, in the alternative, require a respondent to provide to bar counsel a written response to any request for information by a date certain. The subpoena may also require the person to whom it is directed to make written answer to written interrogatories to be attached thereto. The answers shall be made under oath, signed by the witness, and filed within the time and at the place therein set forth. Such subpoena shall be in substantially the following form:

BEFORE THE PRESIDING DISCIPLINARY JUDGE  
(THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE)  
(CHIEF BAR COUNSEL)

In the Matter of a Member	)	Bar No. _____
Of the State Bar of Arizona	)	SUBPOENA
	)	(FOR WRITTEN RESPONSE TO
	)	REQUEST FOR INFORMATION)
	)	(UPON WRITTEN
_____	)	INTERROGATORIES)

STATE OF ARIZONA

TO: (Name of Witness)

(FOR SUBPOENA UPON WRITTEN RESPONSE TO ALLEGATIONS)

You are hereby directed to make a written response to the allegations and serve such response on bar counsel at (address) in the City of Phoenix, Arizona 850\_\_\_\_, on or before \_\_\_\_20\_\_\_\_.

(FOR SUBPOENA UPON WRITTEN INTERROGATORIES)

You are hereby directed to make written answers under oath, signed by you, to the written interrogatories (questions) attached hereto, and to file such answers with the Disciplinary Clerk at (address), in the city of Phoenix, Arizona 850\_\_\_\_, on or before \_\_\_\_\_, 20 \_\_\_\_.

(The remainder of this subpoena shall be the same as a regular subpoena.)

**(j) Power to Enter, Amend or Vacate.** Unless prohibited elsewhere in these rules, for good cause shown and in the interest of justice any order or judgment may be entered, or may be amended or vacated, by the officer or body that entered it or by a superior body.

**(k) Computation of Time.** Unless otherwise provided, Rules 6(a) and 6(e) Ariz. R. Civ. P., shall apply in all proceedings brought pursuant to these rules.

**(l) Appearances of Counsel; Withdrawal of Counsel.**

1. *Prior to Filing of Formal Complaint.* A respondent may elect to be represented by counsel at any stage of a discipline, disability or reinstatement matter. An attorney who wishes to file or submit papers, or otherwise appear on behalf of a respondent in any discipline, disability or reinstatement matter prior to the filing of a formal complaint shall notify the bar counsel assigned to the matter in writing of the representation. Counsel shall also notify bar counsel in writing upon termination of representation prior to the filing of a formal complaint.

2. *After Filing of Formal Complaint.* No attorney shall appear in any discipline, disability or reinstatement proceeding, or file anything in any such proceeding, without first

appearing as counsel of record. Bar counsel who files a formal complaint shall be deemed counsel of record for the state bar, and a notice of appearance is not required. An attorney who files an answer on behalf of a respondent shall be deemed counsel of record for the respondent and no notice of appearance shall be required. An attorney who wishes to appear or file anything on behalf of the state bar after a complaint is filed, or on behalf of a respondent after an answer is filed, must file a formal notice of appearance with the disciplinary clerk, and serve a copy on the other party. An attorney who is not counsel of record may not appear or file anything unless there has been a motion for substitution, or notice of association of counsel, approved by the presiding disciplinary judge or the court.

3. *On Appeal to the Supreme Court.* Counsel who files an opening or answering brief on appeal shall be deemed counsel of record, and a notice of appearance is not required. Any attorney other than counsel of record who wishes to appear or file anything on behalf of either party shall file a formal notice of appearance with the clerk of the court and serve copies of the notice on the disciplinary clerk and the other party.

4. *Withdrawals and Substitutions of Counsel.* After the filing of a formal complaint, no attorney shall be permitted to withdraw, or be substituted, as attorney of record in any discipline, disability or reinstatement proceeding until a motion for withdrawal or substitution of counsel has been filed and approved by the presiding disciplinary judge or the court.

## Rule 48. Rules of Construction

**(a) Nature of Proceedings.** Discipline and disability proceedings are neither civil nor criminal, but are sui generis.

**(b) Rules of Civil Procedure.** Only the following Arizona Rules of Civil Procedure are applicable to discipline and disability proceedings before the presiding disciplinary judge or the hearing panel, as specifically set forth in these rules: Rules 4, 4.1, 4.2, 5, 5(f), 6(a), 6(e), 7.1(a), 7.1(b), 8(b), 8(d)-(f), 10(b)-(d), 11(a), 12(b), 12(c), 12(e), 12(f), 26(a)-(f), 29-36, 38.1(i), 38.1(j), 42(a), 43-45, 56, 60(c), 80(a), 80(d), 80(h), and 80(i). In addition, Rules 6(c) and 13 of the Arizona Rules of Civil Appellate Procedure shall apply as specified in Rule 59.

**(c) Rules of Evidence.** Except as otherwise provided in these rules, the rules of evidence applicable in the superior court shall be followed as far as practicable.

**(d) Standard of Proof.** Allegations in a complaint, applications for reinstatement, petitions for transfer to and from disability inactive status and competency determinations shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any lawyer who fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz.R.S.Ct., or who fails to

provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz.R.S.Ct.

**(e) Burden of Proof.** The burden of proof in proceedings seeking discipline is on the state bar. That burden is on the petitioning party in proceedings seeking transfer to disability inactive status. That burden in proceedings seeking reinstatement and transfer from disability inactive status is on respondent or applicant.

**(f) Related Pending Litigation.** The processing of a discipline matter shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation, unless the presiding disciplinary judge, in the exercise of discretion, authorizes a stay for good cause shown.

**(g) Non-Abatement.** Unwillingness, failure of the complainant to cooperate with the state bar, withdrawal of a charge, settlement, compromise between the complainant and the respondent, or restitution by the respondent shall not abate the processing of any charge or complaint.

**(h) Effect of Time Limitations.** Except as is otherwise provided in these rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator, but does not justify abatement of any discipline or disability investigation or proceeding.

**(i) Validity of Proceedings.** No action taken by the presiding disciplinary judge or a hearing panel on any complaint, or by the committee, the board, or this court, shall be subject to challenge because of defective or insufficient service if, in fact, the respondent had ample notice of the discipline hearing and full opportunity to be heard. No findings or recommendations made in any proceeding shall be invalidated because of an error in pleading, or in procedure, or upon any other ground, unless upon appeal to the court, it appears from the entire record, including the evidence, that error has been committed which has resulted or will result in a miscarriage of justice.

**(j) Disqualification.** Members of the board, members of the committee, the members of a hearing panel, the presiding disciplinary judge, and settlement officers shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain.

**(k) Effect of Dismissal, Diversion and Prior Discipline.**

1. A dismissal by the state bar or the committee, or a dismissal without prejudice by the presiding disciplinary judge before a hearing on the merits, shall not bar further action based upon the same facts.



2. A dismissal or the imposition of any sanction by the presiding disciplinary judge pursuant to Rule 57, by a hearing panel that is final pursuant to Rules 58(k) or 60, or by the court on appeal after a discipline hearing, shall bar further discipline proceedings based upon the same facts before the presiding disciplinary judge, any hearing panel or the court. Respondent's acceptance of a decision by the hearing panel will also bar further action based upon the same facts.

3. Prior discipline imposed on respondent, with or without respondent's consent, shall be considered by the committee, the presiding disciplinary judge, the hearing panel, and this court in imposing discipline.

4. Successful completion of diversion under these rules pursuant to an agreement with the state bar or by order of the committee, the presiding disciplinary judge, a hearing panel, or the court, shall bar further proceedings based upon the same facts before the committee, the presiding disciplinary judge, a hearing panel, or the court.

**(l) Immunity from Civil Suit.** Communications to the court, state bar, committee, presiding disciplinary judge, acting presiding disciplinary judge, hearing panel members, settlement officers, the client protection fund, the peer review committee, the fee arbitration program, the committee on the Rules of Professional Conduct, monitors of the Member Assistance or Law Office Management Assistance Programs, state bar staff relating to lawyer misconduct, lack of professionalism or disability, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Members of the board, members of the committee, the presiding disciplinary judge, hearing panel members, the peer review committee, client protection fund trustees and staff, fee arbitration committee arbitrators and staff, the Committee on the Rules of Professional Conduct, monitors of the Member Assistance or Law Office Management Assistance Programs, state bar staff, and court staff shall be immune from suit for any conduct in the course of their official duties.

**(m) Immunity from Disciplinary Complaint.** Members of the board, the members of the committee, the presiding disciplinary judge, an acting presiding disciplinary judge, hearing panel members, settlement officers, bar counsel or attorneys acting under the direction or authority of such persons or the court are immune from any charge or discipline complaint alleging ethical misconduct that arises out of an administrative act performed in the exercise of discretion under the authority granted under these rules. No charge or disciplinary complaint against such persons may be docketed for filing by the state bar or be a part of any person's disciplinary history absent a finding by the committee that the charge or complaint alleges one or more violations of the Rules of Professional Conduct. In the event such a finding is made, the matter shall be docketed but may be stayed by order of the presiding disciplinary judge upon application and a showing of good cause.

## F. Participants

### Rule 49. Bar Counsel

**(a) Powers and Duties of Chief Bar Counsel.** Acting under the authority of the board, and under the direction and by appointment of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member or non-member and for the coordination of such investigations; employ and supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A. Notice to Disciplinary Agencies. Chief bar counsel shall transmit notice of discipline, transfers to or from disability inactive status, reinstatements and judgments of conviction to the disciplinary enforcement agency of any other jurisdiction in which the respondent is known to be admitted. Respondent shall identify each such jurisdiction in writing addressed to the chief bar counsel.

B. Disclosure to National Discipline Data Bank. Chief bar counsel shall transmit notice of all public discipline imposed against a respondent, transfers to or from disability inactive status, reinstatements, and certified copies of any criminal conviction to the National Discipline Data Bank maintained by the American Bar Association's National Lawyer Regulatory Data Bank.

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

(i) Disbarment, suspension, interim suspension, reprimand, and reinstatement shall be posted for an indefinite period of time.

(ii) Probation (including admonition with probation), restitution and costs shall be posted for five (5) years from the effective date of the sanction or until completion, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iii) A finding of contempt of a supreme court order shall be posted for five (5) years from the effective date of the order or until the contempt is purged, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iv) A transfer to disability inactive status shall be posted while the order is in effect.

(v) An administrative or summary suspension shall be posted while the suspension is in effect.

D. Notice to Courts. Chief bar counsel shall promptly advise all courts in this state of orders or judgments of suspension, disbarment, reinstatement and transfers to or from disability inactive status. In addition, chief bar counsel shall petition the appropriate court to take such action as may be indicated in order to protect the interests of the public, respondent and respondent's clients.

**(b) Powers and Duties of Bar Counsel.** Bar counsel shall:

1. Review all information coming to the attention of the state bar. Bar counsel shall exercise discretion in initiating investigations when allegations, if true, would be grounds for discipline or transfer to disability inactive status. Bar counsel may request one or more staff examiners to aid in conducting investigations. Staff examiners shall work under the supervision of staff bar counsel. Staff examiners may be, but need not be members of the state bar and may be selected from the regular employees of the state bar.

2. Recommend dispositions prior to formal proceedings, and, if deemed advisable, recommend any discipline in formal proceedings.

3. In appropriate cases, negotiate dispositions of pending matters as authorized in Rule 57(a) or 58.

4. Promptly notify the complainant and respondent of the disposition of each matter.

5. Represent the state bar in and prosecute discipline and reinstatement proceedings and proceedings for transfer to or from disability inactive status before the presiding disciplinary judge, hearing panels, the committee and this court, and prosecute contempt proceedings in the appropriate forum.

6. Dismiss proceedings if, after conducting a screening investigation, there is no probable cause to believe misconduct or incapacity exists pursuant to these rules.
7. Monitor and supervise respondents during a probationary or diversionary term and, as appropriate, report material violations of the terms of probation or diversion to the presiding disciplinary judge and prepare and forward a report to the imposing entity regarding the respondent's completion of the imposed terms.
8. Monitor and supervise conditional admittees during the conditional admission period, pursuant to Rule 36(a)(2)(C)(ii); and
9. Perform such other duties as the court may direct.

## **Rule 50. Attorney Discipline Probable Cause Committee**

**(a) Appointment of Members.** The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (hereinafter committee) is established as a permanent committee of the supreme court. The committee shall consist of nine members, including six active members of the state bar and three public, non-lawyer members. Nonlawyer members shall have all the powers and duties of lawyer members, as provided in these rules. The chief justice shall appoint the members of the committee considering geographical, gender and ethnic diversity. The members of the committee shall serve at the pleasure of the court and may be removed from the committee at any time by order of the court. A member of the committee may resign at any time. A member shall continue to serve until the member's term expires and a replacement is appointed.

**(b) Terms of Office.** The volunteer members shall be appointed for fixed, staggered terms. One third of the members shall be appointed for an initial term of one (1) year, one third for an initial term of two (2) years, and one third for an initial term of three (3) years. After the initial appointments, regular terms shall be three (3) years, except that a member shall continue to serve until the member's successor is duly appointed. Members of the committee shall be eligible to serve no more than two (2) consecutive three-year terms. Appointments to fill a vacancy shall be for the unexpired portion of the term and will be filled in the same manner as the original appointment.

**(c) Chair and Vice-Chair.** The chief justice shall appoint lawyer members as chair and vice chair of the committee for a term to be determined by the chief justice. The chair shall exercise overall supervisory control of the committee. The vice-chair shall assist the chair and shall serve as chair in the chair's absence.

**(d) Reimbursement of Committee Members.** Committee members shall receive no compensation for their services but may be entitled to reimbursement for travel and other expenses incurred in the performance of their official duties, as permitted by law.

**(e) Powers and Duties of the Committee.** Unless otherwise provided in these rules, the committee shall be authorized and empowered to act in accordance with Rule 55 and as otherwise provided in these rules, and to:

1. meet in no less than three-member panels, each of which shall include a public member, as deemed appropriate by the chair;
2. periodically report to the court on the operation of the committee;
3. recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and
4. adopt such procedures as may from time to time become necessary to govern the internal operation of the committee, as approved by the court.

**(f) Meetings and Quorum.** The meetings of the committee are not open to respondent, respondent's counsel, or the public. The committee shall act only with the concurrence of a majority of the members of a panel or of the committee, if meeting en banc. A member may participate in the meetings by remote access.

**(g) Change of Committee Member for Cause.** Upon motion and affidavit of a party and for good cause shown, the chair of the committee may order the removal of a committee member from consideration of a particular matter pending before the committee. If the party seeks removal of the chair, the vice-chair shall consider the request. Absent extraordinary circumstances, a request to remove a committee member shall be filed as soon as the grounds for removal are discovered and prior to the commencement of the committee meeting at which the matter is scheduled for consideration.

**(h) Alternate Members.** If it appears that a significant number of members who may properly render a decision may not be present at the meeting, or may not be able to act in a particular case, the committee chair, or vice-chair if the chair has been recused, may appoint, for that meeting or for that case only, the number of ad hoc members necessary to restore the committee to full membership or at least achieve a quorum of the committee. Alternate members shall be appointed based on the same criteria as committee members.

## **Rule 51. Presiding Disciplinary Judge**

**(a) Presiding Disciplinary Judge.** The supreme court shall appoint a presiding disciplinary judge and other judges as necessary to serve at the pleasure of the supreme court. The court

shall periodically review and evaluate the performance of the presiding disciplinary judge and other judges. Any judge appointed pursuant to this paragraph shall be subject to the same qualification and evaluation criteria as the presiding disciplinary judge.

**(b) Qualifications.** The presiding disciplinary judge shall be an active or judicial member of the state bar and shall have been admitted to the practice of law for at least five years preceding his or her appointment. The presiding disciplinary judge, while serving in that capacity, may not hold any other public office.

**(c) Powers and Duties of the Presiding Disciplinary Judge.** The presiding disciplinary judge shall be authorized to act in accordance with these rules and to:

1. appoint a staff as necessary to assist the presiding disciplinary judge in the administration of the judge's office and in the performance of the judge's duties;
2. order the parties in disciplinary proceedings to attend a settlement conference;
3. impose discipline on an attorney, transfer an attorney to disability inactive status, and serve as a member of a hearing panel in discipline and disability proceedings, as provided in these rules;
4. shorten or expand time limits set forth in these rules, as the presiding disciplinary judge, in the exercise of discretion, determines necessary;
5. enlist the assistance of members of the bar to conduct investigations in conflict cases;
6. periodically report to the court on the operation of the office of the presiding disciplinary judge;
7. recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and
8. adopt such practices as may from time to time become necessary to govern the internal operation of the office of the presiding disciplinary judge, as approved by the supreme court.

**(d) Change of Presiding Disciplinary Judge for Cause.** The presiding disciplinary judge shall not be subject to removal by the parties to a proceeding except upon the grounds set forth in A.R.S. § 12-409(B). Any request to remove the presiding disciplinary judge for cause shall be filed as soon as the grounds for removal are discovered. The disciplinary clerk shall designate a volunteer attorney member from the hearing panel pool to hear the matter and to decide by a preponderance of the evidence whether cause exists. Following the hearing, depending on the findings of the assigned hearing panel member, the matter shall be reassigned to the presiding

disciplinary judge or referred to the disciplinary clerk for designation of an acting presiding disciplinary judge.

## **Rule 52. Hearing Panels**

**(a) Hearing Panels.** Hearing panels are hereby established and empowered to act in accordance with these rules. Each hearing panel shall consist of the presiding disciplinary judge, who shall serve as chair of the hearing panel, one volunteer attorney member, and one volunteer public member.

**(b) Appointment.** The chief justice shall appoint a pool of volunteer attorney and public members to serve on the hearing panels. Attorney members of the pool may also serve as settlement officers. An attorney member shall have been an active or judicial member of the state bar for at least five (5) years preceding his or her appointment.

**(c) Terms of Office.** The volunteer members shall be appointed for fixed, staggered terms. One volunteer member shall be appointed for an initial term of one (1) year, another member for an initial term of two (2) years. The presiding disciplinary judge shall be appointed to the hearing panels by virtue of the position and shall serve in that capacity while employed as the presiding disciplinary judge. After the initial appointments of the volunteer members, regular terms shall be three (3) years. Members shall serve at the pleasure of the court and may be dismissed from service at any time by the court. A member whose term has expired may continue to serve until the conclusion of any proceeding commenced prior to the expiration of the term, and decision thereon, and until a successor is appointed.

**(d) Vacancy.** In the event of a vacancy on a hearing panel, the vacancy shall be filled in the manner provided for in the original appointment.

**(e) Reimbursement.** Members of hearing panels shall receive no compensation for their services but may be entitled to reimbursement for travel and other expenses incurred in the performance of their official duties, as permitted by law.

**(f) Change of Hearing Panel Member for Cause.** The members of the hearing panels shall not be subject to removal by the parties to a proceeding except upon the grounds set forth in A.R.S. § 12-409(B). Any request to remove a hearing officer for cause shall be filed as soon as the grounds for removal are discovered. The presiding disciplinary judge shall hear the matter and decide by a preponderance of the evidence whether cause exists.

**(h) Powers and Duties.** Hearing panels shall be authorized to act in accordance with these rules and shall have the following powers and duties:

1. Hearing panels shall have statewide jurisdiction over proceedings on complaints of misconduct, applications for reinstatement, and any other matters designated by the court, including contempt proceedings (other than those under Rule 47), and upon assignment by the disciplinary clerk.

2. Hearing panels shall prepare findings of fact, conclusions of law, and issue orders consistent with these rules.

3. Hearing panels may dismiss a complaint, order diversion, or impose discipline as provided in these rules.

4. Hearing panels shall file with the disciplinary clerk the originals of all documents and exhibits received or created that are part of the record.

### Rule 53. Complainants

**(a) Status of Complainant.** The complainant is not a party to discipline, disability or reinstatement proceedings. By becoming a complainant, a person submits himself or herself to the jurisdiction of this court and the state bar for all purposes relating to these rules. In order to receive information as provided by this rule, the complainant must keep the state bar informed of any change of address, telephone number, or e-mail address during the pendency of the investigatory or adjudicatory phase of the proceedings. Notice may be accomplished by mailing or otherwise transmitting the notice to the complainant's last known address.

**(b) Information.** The following information will be provided to a complainant, by the state bar, concerning charges made against a lawyer:

1. *Respondent's Response.* A copy of respondent's initial response to the charge, if any, except those portions subject to a protective order, will be provided to the complainant.

2. *Dismissal by Bar Counsel.* Bar counsel shall notify the complainant of the dismissal of a charge.

A. *Prior to a Screening Investigation.* If the state bar dismisses a matter prior to a full screening investigation, bar counsel may notify the complainant of the dismissal by telephone. The complainant may request that the decision to dismiss be reviewed by chief bar counsel or chief bar counsel's deputy.

B. *Following a Screening Investigation.* If the state bar dismisses a matter following a screening investigation, bar counsel shall mail a notice of dismissal to the complainant. The complainant may object to the dismissal as provided by Rule 55(b)(2)(A)(ii).



3. *Duty to Advise Complainant of Proceedings.* The state bar shall advise the complainant of a recommendation of any discipline, diversion, or pending agreement for discipline by consent. It shall also provide written notice of the hearing on the merits before a hearing panel, and of any public proceeding before the presiding disciplinary judge or the court. The state bar shall provide information to enable the complainant to ascertain the date, time and location of such proceedings, which may include the website address of the state bar or the disciplinary clerk. In the case of an agreement for discipline by consent, the complainant shall also be notified of the opportunity to file a timely written objection and to be heard at any hearing concerning the agreement.

4. *Final Disposition.* Complainants shall receive notice of the final disposition of each matter.

**(c) Failure to Provide Information.** The ultimate disposition of any disciplinary proceedings shall not be affected by the failure of the state bar to provide the complainant with information as required by subsection (b) of this rule.

## **G. Grounds for Discipline**

### **Rule 54. Grounds for Discipline**

Misconduct by an attorney, both members and non-members, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:

**(a) Violation of a rule of professional conduct.** This includes violations of professional conduct rules in effect in any jurisdiction.

**(b) Violation of a canon of judicial conduct.**

**(c) Knowing violation of any rule or any order of the court.** This includes court orders issuing from ~~of~~ a state, tribe, territory or district of the United States, including child support orders.

**(d) Violation of any obligation pursuant to these rules in a disciplinary or disability investigation or proceeding.** Such violations include, but are not limited to, the following:

1. *Evading service or refusal to cooperate.* Evading service or refusal to cooperate with officials and staff of the state bar, the committee, the presiding disciplinary judge, a

hearing panel, or a conservator appointed under these rules acting in the course of that person's duties constitutes grounds for discipline.

*2. Failure to furnish information.* The failure to furnish information or respond promptly to any inquiry or request from bar counsel, the board, the committee, the presiding disciplinary judge, a hearing panel, or this court, made pursuant to these rules for information relevant to pending charges, complaints or matters under investigation concerning conduct of a lawyer, or failure to assert the ground for refusing to do so constitutes grounds for discipline. Nothing in this rule shall limit the lawyer's ability to request a protective order pursuant to Rule 70(g). Upon such inquiry or request, every lawyer:

A. shall furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

B. shall permit inspection and copying of the lawyer's business records, files and accounts;

C. shall furnish copies of requested records, files and accounts;

D. shall furnish written releases or authorizations where needed to obtain access to documents or information in the possession of third parties, including in the case of inquiries into the physical or mental capacity of a lawyer written releases or authorizations needed to obtain access to medical, psychiatric, psychological or other relevant records and opinions; and

E. shall comply with discovery conducted pursuant to these rules.

**(e) Violation of a condition of probation or diversion.**

**(f) Violation of a condition of admission imposed by the court or the Committee on Character and Fitness pursuant to Rule 36(a)(4)(D).**

**(g) Conviction of a crime.** A lawyer shall be disciplined as the facts warrant upon conviction of a misdemeanor involving a serious crime or of any felony. "Serious crime" means any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft or moral turpitude. A conspiracy, a solicitation of another or any attempt to commit a serious crime, is a serious crime. Receipt by the state bar of a certified copy of the judgment of conviction, or other information of conviction of a lawyer, shall be treated and processed as is any other charge against a lawyer, except that the sole issue to be determined shall be the extent of the discipline to be imposed. In any discipline proceeding based on the conviction, proof of conviction shall be conclusive evidence of the attorney's guilt of the crime.

**(h) Discipline imposed in another jurisdiction.**

**(i) Unprofessional conduct as defined in Rule 31(a)(2)(E).**

## **H. Proceedings**

### **Rule 55. Initiation of Proceedings; Investigation**

**(a) Commencement; Determination to Proceed.** The state bar shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct, or incapacity.

1. If the state bar determines the lawyer is not subject to the disciplinary jurisdiction of the supreme court, it shall refer the information to the appropriate entity.

2. If the state bar determines the lawyer is subject to the disciplinary jurisdiction of the court, it shall, in the exercise of its discretion, resolve the matter in one of the following ways:

A. dismiss the matter with or without comment; or

B. enter into a diversion agreement or take other appropriate action without conducting a full screening investigation where warranted; or

C. refer the matter for a screening investigation as provided in Rule 55(b) if the alleged conduct may warrant the imposition of a sanction.

**(b) Screening Investigation and Recommendation by the State Bar.** When a determination is made to proceed with a screening investigation, the investigations shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that he or she is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by the state bar until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* The respondent shall provide a written response to the allegations to bar counsel within twenty days (20) after notice of the investigation is given.

A. *Extensions of Time.* Bar counsel may grant one extension of time to file a written response not to exceed twenty days. Any additional requests for extensions of time

must be approved by chief bar counsel for good cause shown.

*B. Failure to Respond.* If respondent fails to timely respond as provided in these rules, bar counsel may seek an investigative subpoena pursuant to Rule 47(h)(1) to compel respondent's attendance and production of documents. Respondent may be subject to contempt proceedings pursuant to Rule 47(h)(4) if he or she refuses to appear or comply with the subpoena.

## *2. Action Taken by the State Bar.*

### *A. Dismissal.*

(i) *Notice.* After conducting a screening investigation, if there is no probable cause to believe that misconduct or incapacity under these rules exists, bar counsel shall dismiss the charge, with or without comment, by filing a notice of dismissal with the Records Manager of the Lawyer Regulation Office of the state bar. Within twenty (20) days of dismissal of a charge, bar counsel shall provide a written explanation of the dismissal to the complainant.

(ii) *Review by Committee.* If bar counsel dismisses the charge, the complainant may, within ten (10) days of receipt of the explanation of dismissal, submit to the state bar an objection to bar counsel's decision, which shall be reviewed by the committee. Objections shall be referred to the committee for decision. The committee shall review the matter and make a determination as provided in subsection (c) below; provided, however, that the committee shall sustain the dismissal unless it constituted an abuse of discretion. When the committee sustains a dismissal, it shall furnish the complainant a written explanation of its determination.

*B. Recommendation Other than Dismissal.* If, after investigation, bar counsel determines a recommendation for diversion, stay, probation, restitution, admonition, or assessment of costs and expenses is appropriate, bar counsel shall provide to the complainant and to respondent a written explanation of the recommendation. Bar counsel shall inform the complainant of the right to submit a written objection, and the respondent of the right to submit a summary of the response to the charges, not to exceed five (5) pages. Such documents shall be filed with the state bar within ten (10) days of receipt of the explanation. The state bar shall submit complainant's objection, if any, and respondents' summary, if any, to the committee along with bar counsel's report of investigation and recommendation.

**(c) Decision by Committee.** Any recommendation by the state bar for a disposition other than dismissal shall be reviewed by the committee.

*1. Action Taken by the Committee.* The committee shall review the report, the

complainant's objection, if any, and respondent's summary of the response to the charges, if any, and:

- A. direct bar counsel to conduct further investigation;
- B. dismiss the allegations and furnish the complainant with a written explanation of its determination;
- C. refer the matter to diversion as provided in Rule 56;
- D. order an admonition, probation, restitution, assessment of costs and expenses, or a stay; or
- E. authorize bar counsel to prepare and file a complaint against the respondent or a petition for transfer to disability inactive status.

2. *Considerations in Authorizing Complaint.* In determining whether to authorize bar counsel to file a complaint, the committee shall first determine whether probable cause exists, and if so, shall consider the following:

- A. whether it is reasonable to believe that misconduct warranting discipline can be proven by clear and convincing evidence;
- B. whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings;
- C. the level of the actual or potential injury; and
- D. whether the respondent has previously been disciplined or participated in diversion.

3. *Filing of Committee Decision.* The committee shall file its decision with the Records Manager of the Lawyer Regulation Office of the state bar.

4. *Disposition Prior to Formal Complaint.*

A. Subject to the terms of this subsection, a decision of the committee shall be final with respect to dismissal, diversion, stay, admonition, assessment of costs and expenses, probation, restitution, and the filing of formal discipline or disability proceedings. Orders of diversion, stay, admonition, probation, restitution, and assessment of costs and expenses shall be signed by the committee chair or vice-chair.

B. Within ten (10) days of service of an order of diversion, stay, probation, restitution, admonition, or assessment of costs and expenses entered by the

committee, respondent has the right to demand that a formal proceeding be instituted, whereupon such order shall be vacated and the matter disposed of in the same manner as any other matter instituted before the presiding disciplinary judge.

C. A recommendation of any sanction that is consented to by respondent, pursuant to Rule 57(a), before or while the matter is pending before the committee, other than those made final by decision of the committee, shall be submitted directly to the presiding disciplinary judge for review.

## **Rule 56. Diversion**

**(a) Alternative to Discipline.** Diversion is an alternative to formal discipline and may be imposed for a specified period not in excess of two (2) years, but may be renewed for an additional two (2) year period. The terms of the diversion agreement will be stated in writing, and may include restitution and assessment of costs and expenses.

**(b) Referral to Diversion.** Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to the attorney, based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and supreme court websites. Where the conduct so warrants, diversion may be offered, if:

1. the lawyer committed professional misconduct or is incapacitated or the state bar and the respondent agree that diversion will be useful;
2. the professional misconduct was not committed intentionally;
3. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;
4. the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through alternative programs or mechanisms, including:
  - A. medical, psychological, or other professional treatment, counseling or assistance,
  - B. appropriate educational courses or programs,
  - C. mentoring or practice monitoring services,
  - D. dispute resolution programs, or
  - E. any other program or corrective course of action agreed upon by the state bar and respondent to address respondent's misconduct;

5. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and

6. the terms and conditions of the diversion plan can be adequately supervised.

**(c) Approval of Diversion Agreement.** If the agreement is entered prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney and the state bar. If diversion is offered and entered after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the diversion agreement shall be submitted to the committee for consideration. If the committee rejects the diversion agreement, the matter shall proceed as otherwise provided in these rules. If diversion is offered and entered after a complaint has been filed pursuant to Rule 58, the diversion agreement shall be submitted to the presiding disciplinary judge or the court, depending on the body before which the matter is pending. If the diversion agreement is rejected, the matter shall proceed as provided in these rules.

**(d) Reinstatement of Discipline Proceeding.** A discipline matter shall be held in abeyance during diversion. If a respondent violates a term of diversion, bar counsel may reinstate the discipline proceeding and go forward with the proceeding as provided in these rules.

**(e) Dismissal.** After successful completion of diversion under these rules, the matter shall be dismissed by bar counsel or by order of the committee, the presiding disciplinary judge, a hearing panel, or the court. Dismissal under this rule shall not preclude the state bar from using the fact of an order of diversion and the facts of the underlying matter in other discipline proceedings, except that the order shall not be considered as a prior disciplinary offense in aggravation.

## Rule 57. Special Discipline Proceedings

### (a) Discipline by Consent

1. *Consent to Discipline.* A respondent against whom a charge has been made or a complaint has been filed may tender, with the agreement of the state bar, a conditional admission to the charge or complaint or to a particular count in exchange for a stated form of discipline, other than disbarment, at any stage of the proceedings.

~~2. (c) Form of Agreement. All agreements~~ An agreement for discipline by consent shall be signed by respondent, respondent's counsel, if any, and bar counsel. An agreement shall include the following:

*A. Rule Violation.* Each count alleged in the charge or complaint shall be addressed in the agreement, including a statement as to the specific disciplinary rule that was violated, or conditionally admitted to having been violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count.

*B. Form of Discipline.* The form of discipline to be imposed shall be set forth in the agreement. If probation is agreed to, the terms shall be stated in specific, understandable, and enforceable language and advise the respondent that failure to comply with the terms and conditions of probation will result in the filing of a notice of non-compliance by the bar with the presiding disciplinary judge and a hearing will be held within thirty (30) days to determine whether the respondent has breached the agreement. A finding that the respondent breached the terms and conditions of probation may result in the imposition of disciplinary sanctions.

*C. Restitution.* Restitution which may be due each complainant named in the charge or complaint shall be addressed in the agreement. If restitution is not sought or agreed to, bar counsel must avow that a good faith effort has been made to notify the complainant that restitution will not be forthcoming pursuant to these proceedings.

*D. General Language.* Agreements must include the following language, as applicable:

(i) a statement that the respondent's admission(s) to the charge, complaint, or portion thereof, is being tendered in exchange for the stated form of discipline and is submitted freely and voluntarily and not as a result of coercion or intimidation;

(ii) a statement that the respondent is represented by counsel or has chosen not to seek the assistance of counsel and voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved;

(iii) a statement that respondent acknowledges the duty to comply with all rules pertaining to notification of clients, return of property and other rules pertaining to suspension, including reinstatement;

(iv) a statement that outlines the possible consequences of any violation of the terms and conditions of probation or any other provision of the agreement;

(v) a statement that the agreement has been approved as to form and content by the chief bar counsel or chief bar counsel's designee.



E. *Legal Grounds.* Each agreement shall include a discussion of the American Bar Association's *Standards for Imposing Lawyer Sanctions* and an analysis of the proposed sanction, including a discussion as to why a greater or lesser sanction would not be appropriate under the circumstances of the case. Exhibits, such as a record of criminal conviction, pre-sentence reports, medical records, public records, and any other records in support of the agreement or the sanction to be imposed may be filed with the agreement, as agreed upon by the parties, in addition to any statement of costs and expenses on admitted counts. The parties shall be responsible for redacting any sensitive data filed with the agreement, in accordance with Rule 5(f), Ariz. R. Civ. P.

F. *Use of Standardized Documents.* The Agreement for Discipline by Consent may include standardized documents approved by chief bar counsel related to the terms of probation.

### 3. *Procedure.*

A. If the parties reach an agreement before the authorization to file a formal complaint and the agreed upon sanction does not include a reprimand, suspension, or disbarment, the parties may elect to request an order pursuant to Rule 55(c) by providing to the committee for its review an investigative report and bar counsel's recommendation for an admonition, probation, restitution, or an assessment of costs and expenses. Alternatively, the parties may submit an agreement for discipline by consent with all supporting exhibits to the committee for its review. The committee shall either reject the request or agreement and order the proceedings continued in accordance with these rules, or accept the request or agreement and issue the appropriate order.

B. If the agreement is reached before the authorization to file a formal complaint and the agreed upon sanction includes a reprimand or suspension, or if the agreement is reached after the authorization to file a formal complaint, the agreement shall be filed with the disciplinary clerk to be presented to the presiding disciplinary judge for review. The presiding disciplinary judge, in his or her discretion or upon request, may hold a hearing to establish a factual basis for the agreement and may accept, reject, or recommend the agreement be modified.

4. *Presiding Disciplinary Judge Report.* Within thirty (30) days of the submission of an agreement or the conclusion of hearing, if one is held, and receipt of the transcript, if any, the presiding disciplinary judge shall file a report with the disciplinary clerk and serve a copy on the parties. The report shall accept, reject or recommend modification of the proposed agreement. The report shall incorporate all or portions of the agreement, as appropriate.

A. *Acceptance.* If the agreement is accepted, the presiding disciplinary judge shall issue an appropriate judgment and order, which ~~it~~ shall be final.

*B. Modification.* The presiding disciplinary judge may recommend the modification of an agreement. In that event, the presiding disciplinary judge shall clearly state the nature and substance of the proposed modifications and give the parties not less than ten (10) or more than thirty (30) days to execute the proposed modifications and file the modified agreement for consideration. If the parties fail to submit a modified agreement within the time provided, and they have not requested additional time, the agreement shall be deemed rejected. For good cause shown, the presiding disciplinary judge may grant one thirty (30) day extension of time to file the modified agreement, so long as the modified agreement is filed within one hundred fifty (150) days of the filing of the complaint.

*C. Rejection.* If the agreement is rejected, the presiding disciplinary judge shall state the reasons for rejection. Upon rejection, the agreement and all admissions contained therein are withdrawn and shall not be used against the parties in any subsequent proceeding.

5. *Disbarment by Consent.* The following provisions shall apply to admissions that constitute disbarment by consent:

A. Any member against whom charges have been made or a formal complaint filed may voluntarily consent to disbarment by filing with the disciplinary clerk, in duplicate original, a written, verified consent to disbarment in the form prescribed in these rules or as otherwise approved by the court. The consent to disbarment shall be effective only upon acceptance by the presiding disciplinary judge. The general form of consent to disbarment shall be as follows:

BEFORE THE PRESIDING DISCIPLINARY JUDGE

In re:	)	No. SB
(NAME OF MEMBER), a	)	Bar No.
member of the State Bar of-	)	
Arizona,	)	CONSENT TO
Respondent	)	DISBARMENT
_____	)	

I, (name of lawyer), residing at (city and street address), voluntarily consent to disbarment as a member of the State Bar of Arizona and consent to the removal of my name from the roster of those permitted to practice before this court, and from the roster of the State Bar of Arizona.

I acknowledge that (charges) a formal complaint have/has been (made) filed against me. I have read the (charges) complaint, and the charges there made against me. I further

acknowledge that I do not desire to contest or defend against the charges, but wish to consent to disbarment. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to disbarment freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to discipline, disability, resignation and reinstatement, and I understand that any future application by me for admission or reinstatement as a member of the State Bar of Arizona will be treated as an application by a member who has been disbarred for professional misconduct, as set forth in the (charges) complaint (made) filed against me. The misconduct of which I am accused is described in the (charges) complaint bearing the number referenced above, a copy of which is attached hereto.

DONE AT \_\_\_\_\_, Arizona on \_\_\_\_\_, 20 \_\_\_\_.

(Signature)

\_\_\_\_\_  
(Name)

(Verification)

B. Upon acceptance of the consent to disbarment, the presiding disciplinary judge shall promptly enter a judgment disbarring the member and striking the name of the member from the roll of lawyers, and the member shall no longer be entitled to the rights and privileges of a lawyer, but will remain subject to the jurisdiction of the court, and the member shall immediately comply with the requirements relating to notification of clients and others.

C. Upon the acceptance of the consent to disbarment, and unless otherwise ordered by the presiding disciplinary judge, no further disciplinary action shall be taken in reference to the matters that were the subject of the (charges) complaint upon which the consent to disbarment and the judgment of disbarment were based.

**(b) Reciprocal Discipline.**

1. *Duty to Obtain Order of Discipline from Another Jurisdiction.* Upon being disciplined in another jurisdiction, a lawyer admitted to practice in the State of Arizona, whether active, inactive, retired, or suspended, shall, within thirty (30) days of service of the notice of imposition of discipline from the other jurisdiction, inform the disciplinary clerk of such action, and identify every court in which the lawyer is or has been admitted to practice. Upon notification that a lawyer subject to the jurisdiction of this court has been disciplined in another jurisdiction, the disciplinary clerk shall obtain a certified copy of the disciplinary order and file it with the presiding disciplinary judge.

2. *Notice Served Upon Respondent.* Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in the State of Arizona has been

disciplined in another jurisdiction, the presiding disciplinary judge shall issue a notice to the lawyer and to bar counsel containing:

A. a copy of the order from the other jurisdiction; and

B. an order directing that the lawyer or bar counsel inform the presiding disciplinary judge, within thirty (30) days from service of the notice, of any claim by the lawyer or bar counsel predicated upon the grounds set forth in the next paragraph that the imposition of identical or substantially similar discipline in this state would be unwarranted and the reasons therefor.

3. *Discipline to Be Imposed.* Upon the expiration of thirty (30) days from service of the notice pursuant to the provisions above, the presiding disciplinary judge shall impose the identical or substantially similar discipline, unless bar counsel or respondent establishes by a preponderance of the evidence, through affidavits or documentary evidence, or as a matter of law by reference to applicable legal authority, or the presiding disciplinary judge finds on the face of the record from which the discipline is predicated, it clearly appears that:

A. the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

B. there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the presiding disciplinary judge could not, consistent with its duty, accept as final the other jurisdiction's conclusion on that subject; or

C. the imposition of the same discipline would result in grave injustice; or

D. the misconduct established warrants substantially different discipline in this state.

4. *Alternative Discipline.* If the presiding disciplinary judge determines that any of the above listed elements exist, the judge may:

A. direct that a complaint be filed;

B. impose suitable discipline; or

C. dismiss the matter.

The decision of the presiding disciplinary judge shall be final as provided for in other discipline matters, except that an order of reprimand, suspension or disbarment shall be subject to the parties' right to appeal.

5. *Conclusiveness of Adjudication in Other Jurisdiction.* In all other respects, a final adjudication in another jurisdiction that a lawyer has been found guilty of misconduct shall establish conclusively the misconduct for purposes of a discipline proceeding in this state.

## Rule 58. Formal Proceedings

**(a) Complaint.** Formal discipline proceedings shall be instituted by the state bar filing a complaint or agreement for discipline by consent with the disciplinary clerk. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

1. *Form.* The complaint and all subsequent pleadings filed before the presiding disciplinary judge should be captioned as set forth below:

### BEFORE THE PRESIDING DISCIPLINARY JUDGE

In the Matter of a Member    )  
of the State Bar of Arizona,   )  
(Name)                               )  
Bar No. 000000                    )

2. *Service of Complaint.* The state bar shall serve the complaint upon the respondent within five (5) days of filing and in the manner set forth in Rule 47(c). Upon receipt of the complaint and notice that the state bar has served the complaint upon the respondent, the disciplinary clerk shall assign the matter to the presiding disciplinary judge and advise the respondent in writing of respondent's right to retain counsel.

**(b) Answer.** Respondent shall file an answer with the disciplinary clerk and serve copies upon bar counsel of record within twenty (20) days after service of the complaint, unless, upon written request by respondent, the time is extended by the presiding disciplinary judge. The presiding disciplinary judge may grant one extension of time, not to exceed thirty (30) days. Respondent shall provide a current address in his or her answer, and confirm that the address given is the address reported to the state bar pursuant to Rule 32(c)(3). A respondent's answer must comply with Rule 8(b), Ariz.R.Civ.P.

**(c) Initial Case Management Conference.** Within ten (10) days after the time for filing an answer has expired, the presiding disciplinary judge shall contact the parties and hold a mandatory case management conference for purposes of establishing the discovery schedule, as well as scheduling the hearing on the merits and all other prehearing conferences. Bar counsel and respondent, and respondent's counsel, if any, shall appear for the initial case

management conference. The parties may participate in the conference telephonically or by other appropriate electronic means.

**(d) Default Procedure; Aggravation/Mitigation Hearing.** If respondent fails to answer within the prescribed time, the disciplinary clerk shall, within five (5) days thereafter, file and serve a copy of the notice of default upon respondent and bar counsel. A default shall not be entered if the respondent files an answer or otherwise defends prior to the expiration of ten (10) days from the service of the notice of default. Otherwise, a default shall be entered by the disciplinary clerk eleven (11) days after the notice of default is filed and served and the allegations in the complaint shall be deemed admitted. Entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c), Ariz.R.Civ.P. The presiding disciplinary judge shall schedule an aggravation/ mitigation hearing before the hearing panel. Not less than fifteen (15) days before the date set for the aggravation/mitigation hearing, the presiding disciplinary judge shall serve notice of the hearing on the parties. The hearing shall be held not earlier than fifteen (15) days nor later than thirty (30) days ~~of~~ after the entry of default. The hearing panel shall prepare a report as provided in paragraph (k) of this rule.

**(e) Initial Disclosure Statements.** The state bar, within ten (10) days after the answer is filed, and respondent, within thirty (30) days after the answer is filed, shall each serve upon the other an initial disclosure statement. The initial disclosure statement shall include the following:

1. the names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at the hearing with a description of each witness' expected testimony;
2. the names and addresses of all persons whom the party believes may have knowledge or information relevant to the matter and the nature of the knowledge or information each such individual is believed to possess;
3. the names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements;
4. the name and address of each person whom the disclosing party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert;
5. the existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use at the hearing, including documentation of prior discipline the state bar may seek to introduce;

6. a list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party intends to introduce at the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure if not previously provided. If production is not made, the name and address of the custodian of the document will be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business;

7. the existence of prior discipline or a prior course of conduct;

8. evidence in aggravation or mitigation that may be presented at hearing;

9. the factual and legal bases upon which the respondent may rely at hearing to contest the allegations in the complaint.

**(f) Discovery.**

1. *Time limits.* Unless extended by agreement of the parties or otherwise ordered at the case management conference, all initial discovery requests must be made within forty (40) days of the date an initial answer is filed, except that additional discovery requests may be filed within thirty (30) days of the date an answer is filed to an amended complaint. Discovery requests based upon an amended complaint shall be limited to new allegations. Discovery shall be governed by Rules 26(a) through (f), Rules 29 through 36, and Rule 45, Ariz. R. Civ. P., to the extent not inconsistent with these rules.

2. *Response time.* Unless extended by agreement of the parties, answers to discovery requests, including interrogatories, requests for admission, and requests for production of documents or things, shall be provided within thirty (30) days of the date of service of the discovery request. Failure of a respondent to comply with discovery requests and disclosure requirements may be construed as failure to cooperate under Rule 54(d).

3. *Sanctions for failure to make disclosure or discovery.* Following a good faith effort to resolve a discovery issue, either party may file a notice of failure to comply with discovery rules, which shall include a statement that an attempt was made to resolve the issue. A hearing, which may be telephonic, shall be held within five (5) days of the date the notice is filed. Evidence of compliance and non-compliance may be produced at the hearing. The presiding disciplinary judge shall enter appropriate orders at the conclusion of the hearing, which are limited to the sanctions set forth in subsections (A) and (B) of this rule.

(A) *Willful violation of the disclosure or discovery rules.* Evidence that is not disclosed as required by these rules shall not be admitted at hearing by the non-compliant party if the presiding disciplinary judge concludes that non-compliance was willful. In making findings of fact about the allegations of misconduct, the presiding

disciplinary judge shall conclude that responses to specific interrogatories and requests for admissions and production would have been adverse to the non-compliant party.

(B) *Other violations of the disclosure or discovery rules.* The presiding disciplinary judge may utilize any of the following sanctions for non-willful violations of the disclosure or discovery rules:

(i) An order refusing to allow the non-compliant party to support or oppose designated allegations, claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(ii) An order striking out pleadings or parts thereof, or staying further proceedings until the disclosure or discovery rules or presiding disciplinary judge order is obeyed, or dismissing designated allegations in the complaint or defenses thereto, or rendering a judgment by default against the non-compliant party.

(C) *Evasive or incomplete disclosure, answer, or response.* An evasive or incomplete disclosure, answer, or response by a respondent may be construed as a violation under Rule 54(d).

**(g) Settlement Conference.** After an answer has been filed and respondent is not otherwise in default, the disciplinary clerk shall assign the matter to a settlement officer, not otherwise assigned to the matter, who shall conduct at least one (1) conference for the purpose of facilitating settlement of the case, unless both parties agree otherwise. The settlement officer shall serve upon the state bar and the respondent a notice of date and place of the settlement conference. Failure of a respondent to participate in a duly noticed settlement conference may be construed as a violation under Rule 54(d).

1. *Ex Parte Communications/Confidentiality.* The settlement officer may engage in ex parte communications. Discussions in the settlement conference shall not be disclosed unless stipulated to by the parties or necessary to implement the agreement of the parties.

2. *Settlement.* In the event an agreement is reached, the settlement officer, upon agreement of the parties, may order the submission of a written agreement within thirty (30) days.

**(h) Prehearing Conference.** At the discretion of the presiding disciplinary judge, or upon request of either party, one or more prehearing conferences may be held before the presiding disciplinary judge for the purpose of determining case status, establishing a hearing schedule, disposing of outstanding procedural matters or otherwise narrowing the issues to be presented at the hearing on the merits. If the presiding disciplinary judge intends to hear oral argument or otherwise rule on substantive motions, the parties shall be so advised in advance of the



conference. The parties may participate in the conference telephonically or by other appropriate electronic means.

**(i) Joint Prehearing Statements.** Either party may request an order directing the filing of a joint prehearing statement. The presiding disciplinary judge shall order the parties to file a joint prehearing statement if requested by either party, and may do so sua sponte. A party shall file a unilateral prehearing statement if the opposing party is not cooperating in good faith to prepare a joint prehearing statement.

**(j) Hearing.**

1. *Time Limits.* The hearing panel shall hold and complete the hearing on the merits within one hundred fifty (150) days of the filing of the complaint. The hearing date may be continued sua sponte by the presiding disciplinary judge, or upon request or stipulation of the parties, for good cause shown. Continuances may be granted for no more than thirty (30) days at a time, and may not extend the hearing on the merits beyond one hundred fifty (150) days from the filing of the complaint, except as otherwise provided by the presiding disciplinary judge pursuant to Rule 51(c)(4).

2. *Venue.* The hearing shall be held in the county in which respondent resides or maintains an office for the practice of law, provided that the principles of forum non conveniens apply.

3. *Procedure.* The state bar shall prove the allegations contained in the complaint by clear and convincing evidence. The respondent may retain counsel to provide representation at the hearing and may cross-examine witnesses and present evidence on respondent's behalf, as permitted by the rules of evidence. Rule 38.1(i) and (j), Rule 42(a), Rule 43, Rule 44, Rule 80(a),(d),(h),and (i), Ariz. R. Civ. P., are applicable to these proceedings.

4. *Telephonic testimony.* Telephonic witness testimony should normally be permitted if the offering party provides evidence that the witness is unavailable to testify in-person.

5. *Evidence of prior sanctions.* The existence of prior sanctions, including those that are imposed subsequent to the filing of the complaint, may be presented to the hearing panel during the hearing on the merits of the complaint, to the extent permitted by the Rules of Evidence, or as a factor in aggravation. When determining an appropriate sanction, the hearing panel shall consider in aggravation prior sanctions that were final at the time of hearing.

**(k) Report.** Within thirty (30) days after completion of the formal hearing proceedings or receipt of the transcript, whichever is later, the hearing panel shall prepare and file with the disciplinary clerk a written report containing findings of fact, conclusions of law and an order regarding discipline, together with a record of the proceedings. Sanctions imposed shall be

determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis. The report shall be signed by each member of the hearing panel. Two members are required to make a decision. A member of the hearing panel who dissents shall also sign the report and indicate the basis of the dissent in the report. The disciplinary clerk shall serve a copy of the report on respondent and on bar counsel of record. The hearing panel shall notify the parties when the report will be filed outside the time limits of this rule and shall state the reason for the delay. The decision of the hearing panel is final, subject to the parties' appeal rights as set forth in Rule 59.

## **Rule 59. Review by the Court**

**(a) Notice of Appeal.** Within ten (10) days after service of a report of the presiding disciplinary judge, except reports regarding consent agreements, or a hearing panel, respondent or the state bar may appeal by filing with the disciplinary clerk a notice of appeal and serving a copy on the opposing party. An opposing party may file a notice of cross-appeal within ten (10) days from service of the notice of appeal and serve a copy on the opposing party.

**(b) Extension of Appeal Time.** The presiding disciplinary judge may, upon motion filed not later than 30 days after the expiration of the time for appeal and a showing of excusable neglect, extend the time for filing the notice of appeal for a period not to exceed fourteen (14) days from the date of the order granting the motion.

**(c) Stay Pending Appeal.** A respondent may seek a stay of the decision of the hearing panel by filing the request with the hearing panel. The application for stay pending appeal shall be granted subject to appropriate conditions of probation and supervision, except when an interim suspension has been ordered or when the hearing panel, in its discretion, determines no conditions of probation and supervision will protect the public while the appeal is pending.

**(d) Notice of Additional Transcripts.** A party requiring additional transcripts for the purpose of appeal shall arrange for transcription at the party's expense. Within ten (10) days of filing the notice of appeal, the party shall file with the disciplinary clerk a notice of intent to file additional transcripts and shall advise when the party anticipates the transcripts will be filed. Upon filing the transcript with the disciplinary clerk, the party shall serve a copy on the opposing party.

**(e) Docketing the Appeal.** The disciplinary clerk shall docket the appeal and notify the parties of the docketing and the briefing schedule after the filing of a notice of cross-appeal or the expiration of time for filing a cross-appeal, and upon the filing of any transcript of which the disciplinary clerk has received notice pursuant to paragraph (d).

**(f) Time for Filing Briefs.** The appellant's opening brief, and appellee's opening brief in a cross-appeal, if any, shall be filed with the disciplinary clerk no later than thirty (30) days after the notice of docketing. The answering briefs shall be filed with the disciplinary clerk no later than thirty (30) days after service of the opening brief. A reply brief may be filed with the disciplinary clerk no later than fifteen (15) days after service of the answering brief. A party who files a cross-appeal may combine in one brief the opening cross-appeal brief and the answering brief, but such brief shall be filed within the time allowed for filing the brief as cross-appellant.

**(g) Briefs; Form, Length, and Content.** Briefs shall conform to the requirements of Rule 6(c), Ariz. R. Civ. App. P. Principal briefs shall not exceed 10,500 words, or thirty (30) pages if prepared in monospaced typeface, and reply briefs shall not exceed 7,000 words, or twenty (20) pages if prepared in monospaced typeface. Briefs shall not be bound. The content of the briefs shall conform to Rule 13, Ariz. R. Civ. App. P.

**(h) Perfection of Appeal.** Perfection of the appeal and cross-appeal shall be a precondition of transmitting the record to the court. For purposes of this rule, perfection shall include the timely filing of a notice of appeal or cross-appeal and the timely filing of the appellant's or cross-appellant's opening brief.

**(i) Abandonment of Appeal; Dismissal.** In the event an appeal or cross-appeal is not fully perfected, it shall be deemed abandoned and shall be dismissed by order of the presiding disciplinary judge, with notice to the appellant or cross-appellant.

**(j) Transmittal of Record.** After the time for filing the appellate briefs has expired and the appeal and cross-appeal, where applicable, are otherwise perfected, the disciplinary clerk shall transmit the entire record, including any transcripts and the parties' briefs, to the clerk of the court.

**(k) Oral Argument.** Oral argument may, in the court's discretion, be scheduled in an appeal upon request of either party or upon the court's own motion.

**(l) Discretionary Review by the Court.** Notwithstanding a party's decision not to appeal a decision of a hearing panel or the presiding disciplinary judge, the court, in its discretion and not on the motion of either party, may review any such decision.

**(m) Standard of Review.** The court shall review questions of law de novo. In reviewing findings of fact, the court shall apply a clearly erroneous standard.

**(n) Form of Decision.** The court may resolve any matter before it by opinion, memorandum decision, or order, as the court may determine in its discretion.

**(o) Priority Over Civil Matters.** Matters arising out of orders for discipline in the form of suspension or disbarment shall take precedence over all civil cases in this court.

## I. Sanctions

### Rule 60. Disciplinary Sanctions

**(a) Types and Forms of Sanctions.** Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment.* Disbarment may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge.

2. *Suspension.* Suspension may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge for an appropriate fixed period of time not in excess of five (5) years. Suspended members shall remain suspended until the court enters an order reinstating the member to the practice of law in Arizona.

3. *Reprimand.* A reprimand may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge.

4. *Admonition.* An admonition may be imposed by judgment and order of the court, a hearing panel, the presiding disciplinary judge, or the committee.

5. *Probation.* Probation may be imposed by order of the court, a hearing panel, the presiding disciplinary judge, or the committee as follows:

A. Probation shall be imposed for a specified period not in excess of two (2) years, but may be renewed for an additional two (2) year period.

B. Probation may be imposed only in those cases in which there is little likelihood that the respondent will harm the public during the period of probation, and the conditions of probation can be adequately supervised. The conditions of probation shall be stated in writing, shall be specific, understandable and enforceable, and may include restitution and assessment of costs and expenses.

C. The state bar shall be responsible for monitoring and supervising the respondent during the probationary period. The state bar shall report material violations of the terms of probation to the presiding disciplinary judge, which may hold a hearing within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. In a probation violation hearing, a violation must be proven by a preponderance of the evidence. At the end of the probation term, bar counsel shall prepare and forward a notice to the presiding disciplinary judge regarding the respondent's completion or non-completion of the imposed terms.

6. *Restitution.* Restitution may be imposed by order of the committee, the presiding disciplinary judge, the hearing panel, or this court to persons financially injured, including reimbursement to the state bar client security fund. Restitution and the amount thereof must be proven by a preponderance of the evidence.

**(b) Assessment of the Costs and Expenses.** An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon a respondent by the committee, the presiding disciplinary judge, the hearing panel, or the court, as appropriate, in addition to any other sanction imposed. Upon a showing of good cause, all or a portion of the costs and expenses may be waived.

1. *Statement of Costs; Objections.* At the conclusion of the disciplinary proceedings, the state bar shall file an itemized statement of costs and expenses on proven or admitted counts, as set forth below, and shall serve a copy on respondent and the disciplinary clerk. The respondent may file objections within five (5) days of service of the statement of costs and expenses and shall serve a copy on the state bar and the disciplinary clerk.

2. *Procedure.*

A. *Upon Final Order of the Presiding Disciplinary Judge or the Hearing Panel.* If the disciplinary sanction ordered by the presiding disciplinary judge or the hearing panel is not appealed, the state bar shall file a final statement of costs and expenses with the disciplinary clerk within twenty (20) days after the time to appeal has expired. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. The respondent shall file any objections to the statements of costs and expenses within ten days of service. The presiding disciplinary judge or the hearing panel, after considering the statements of costs and expenses and any objections filed by the respondent, or respondent's counsel, if any, shall prepare a report and order assessing costs and expenses and shall file the same with the disciplinary clerk and serve a copy on the bar counsel of record and respondent. The respondent or state bar may contest the assessment of costs and expenses by filing an appeal as set forth in Rule 59.

B. *Upon Final Order of the Court.* Upon final order of the court affirming or imposing any disciplinary sanction, the state bar shall file a final statement of costs and expenses with the clerk of the court within ten (10) days after the clerk has given notice that a decision has been rendered. The clerk of the court or the court may enter an order assessing costs and expenses or remand the matter to the presiding disciplinary judge or the hearing panel for such a determination.

**(c) Enforcement.** Execution and other post-judgment remedies may issue out of and proceed before the superior court as in civil cases for the enforcement of any judgment entered in this

court under these rules. Such matters shall be docketed in the superior court without filing fee as though the complaint had originally been filed in that court.

## **Rule 61. Interim Suspension by the Court**

**(a) Grounds for Interim Suspension.** An interim suspension may be entered upon a showing that a lawyer appears to be misappropriating funds, engaging in conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice, has been convicted of a misdemeanor involving a serious crime or a felony, as defined in Rule 54(g), or is subject to another ground stated in these rules.

**(b) Period of Interim Suspension.** A lawyer may be suspended from the practice of law for an indeterminate interim period not in excess of five (5) years pending further order of this court.

### **(c) Procedure.**

1. *Upon Conviction of a Crime.* Upon conviction of a lawyer of any crime, the clerk of the court in which the conviction is entered shall, within twenty (20) days thereafter, transmit to this court and to the state bar a certified copy of the judgment of conviction, and the convicted lawyer shall, within twenty (20) days after entry of judgment of conviction of a misdemeanor involving a serious crime or of any felony, provide the following information to chief bar counsel: (a) name, bar number and address of record with the state bar, and a current address if different from the address of record; (b) the name of the court in which the judgment of conviction was entered; (c) the case or file number in which the judgment of conviction was entered; and (d) the date the judgment of conviction was entered.

A. *Felony Conviction:* A lawyer shall be suspended after the court's receipt of proof of the lawyer's conviction of a felony under either state or federal law, regardless of the pendency of post conviction motions or an appeal, unless within ten (10) days of the clerk's receipt of proof of the conviction the member files with the court a verified motion showing good cause why the suspension should not be entered. The court may permit the lawyer to present oral argument in support of the lawyer's motion and shall promptly grant or deny it. If the motion is denied, the lawyer shall be suspended as of the date the motion is denied. If the motion is granted, the lawyer shall not be suspended pending completion of a disciplinary proceeding based on such conviction.

B. *Serious Misdemeanor Conviction:* A lawyer convicted of a serious crime other than a felony may be suspended, upon motion of the state bar, pending final disposition of a disciplinary proceeding predicated up the conviction. Within ten (10) days of the state bar filing a motion, respondent may file with this court a verified response showing good cause why respondent should not be suspended. The court

may permit respondent to present oral argument in support of the respondent's response and shall promptly grant or deny the motion. If the motion is granted, the lawyer shall be suspended as of the date of such order.

*C. Reinstatement.* If a lawyer suspended solely under the provisions of sections (A) or (B) demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically terminate any proceeding then pending against the lawyer, the disposition of which shall be determined on the basis of the available evidence.

*2. All Other Grounds for Interim Suspension.* The state bar may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or separate affidavit upon personal knowledge stating sufficient facts to support the requested suspension, and shall include a copy of any related hearing panel report.

*A. Temporary Restraining Order.* Upon verified application in or with the motion, or upon its own motion, the presiding disciplinary judge may issue an order in the nature of a temporary restraining order, with such notice as the judge may prescribe, imposing temporary conditions of probation on the lawyer, or temporarily suspending the lawyer, or both. Any order issued under this provision shall become effective as ordered by the presiding disciplinary judge and remain in effect unless modified or dissolved, as necessary, after a hearing as prescribed in subpart D.

*B. Service of Motion on Respondent.* Upon filing of the motion, the presiding disciplinary judge shall issue an order requiring the state bar to serve, within seven (7) days, the motion and the presiding disciplinary judge's order upon respondent, as appropriate under Rule 47(c), including service by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent to the state bar's membership records department pursuant to Rule 32(c)(3).

*C. Response.* Respondent shall file a response to the motion within ten (10) days of service of the motion. After receiving the response or after the time for filing a response has passed, the presiding disciplinary judge shall promptly rule on the motion or conduct an evidentiary hearing.

*D. Hearing.* If an evidentiary hearing is ordered, it shall be held within ten (10) days of the order. Within five (5) days after the matter is deemed submitted or a hearing is held, the presiding disciplinary judge shall issue and file a report in this court containing findings of fact, conclusions of law and a recommendation. After receiving the presiding disciplinary judge's report, the court shall consider the matter and issue an order or decision forthwith.

**(d) Effect of Order.** An order of interim suspension or decision on the motion shall be effective when entered unless otherwise specified by the court, and shall continue in force until final disposition of all pending proceedings against the lawyer, unless vacated or modified. The clerk of the court shall serve a copy of any resulting order entered in this court on the disciplinary clerk, the respondent, and the state bar. An order of interim suspension shall preclude the lawyer from accepting any new cases but shall not preclude him or her from continuing to represent existing clients until the effective date of the order. Any fees tendered to the lawyer after the order issues but prior to its effective date shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the court. Any order that restricts a lawyer maintaining a trust account shall when served on any bank maintaining an account against which the lawyer may make withdrawals, serve as an injunction to prevent the bank from making further payment from the account or accounts on any obligation except in accordance with restrictions imposed by the court. Unless otherwise specified by the court, the provisions of Rule 72 relating to suspended lawyers shall apply.

## **Rule 62. Summary Suspension by the Board of Governors of the State Bar**

**(a) Grounds.** A member may be summarily suspended from the practice of law upon administrative grounds as provided in these rules, including the following:

1. *Failure to Pay Assessment; Restitution.* A member who fails to pay any order of assessment or restitution may be summarily suspended, provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty (30) days prior to such suspension.

2. *Failure to Pay Annual Membership Fee; Delinquent Fee.* A member who fails to pay a fee within two (2) months after written notice of delinquency, pursuant to Rule 32, or fails to sign the annual dues statement as required by Rule 43(c) may be summarily suspended.

3. *Failure to Complete Mandatory Continuing Legal Education Requirements.* A member who fails to comply with continuing legal education requirements, pursuant to Rule 45, may be summarily suspended, provided that a notice by certified, return receipt mail of such non-compliance has been sent to the member, mailed to the member's last address of record in the state bar office at least thirty (30) days prior to such suspension.

4. *Failure to Comply with Trust Account Requirements.* A member who fails to comply with the requirement pertaining to trust accounts, pursuant to Rule 43, may be summarily suspended, provided that a notice by certified, return receipt mail of such non-compliance has been sent to the member, mailed to the member's last address of record in the state bar office at least thirty (30) days prior to such suspension.



5. *Failure of New Admittee to Complete Professionalism Course.* A new admittee who fails to complete the state bar course on professionalism, or an equivalent course on the principles of professionalism approved or licensed by the Board of Governors of the State Bar of Arizona, as required by Rule 34(h)(1), may be summarily suspended, provided that a notice by certified, return receipt mail of such non-compliance has been sent to the member, mailed to the member's last address of record in the state bar office at least thirty (30) days prior to such suspension.

**(b) Procedure.** The state bar shall provide a request for summary suspension to the board stating the grounds for and referring to the rule authorizing the order. A copy of the request shall be served on the member by certified mail, return receipt. One request may relate to more than one member. Within ten (10) days of service of the request upon the member, the member may file with the board a verified response showing good cause why the member should not be so suspended. The board may permit the member to present oral argument and shall grant or deny the state bar's request. Upon satisfaction that the state bar has shown a prima facie case under the rule referred to, the board shall enter an order of summary suspension, which the state bar shall mail to the respondent within ten (10) days of entry of the order.

**(c) Appeal.** A lawyer may request review of the lawyer's suspension before the board by filing an appeal following the procedures set forth in Rule 59, except that all notices and documents will be filed directly with the clerk of the court.

**(d) Effect of Order.** An order of summary suspension issued pursuant to this rule shall have the same effect as an order of interim suspension issued by the court, as set forth in Rule 61(d).

## J. Disability Proceedings

### Rule 63. Transfer to Disability Inactive Status

**(a) Purpose.** A lawyer whose physical or mental condition adversely affects the lawyer's ability to practice law shall be investigated, and where warranted, shall be the subject of formal proceedings to determine whether the lawyer shall be transferred to disability inactive status. Transfer to disability inactive status is not a form of discipline but is designed to ensure the protection of the public and rehabilitation of the lawyer. Orders of transfer may include conditions of conduct in the nature of probation, and consent orders shall be encouraged.

#### **(b) Method of Transfer**

1. *Judicial Determinations of Incapacity.* If a lawyer has been judicially declared incompetent, incompetent to stand trial, or is voluntarily or involuntarily committed on the grounds of incompetency or other disability or incapacity in a court proceeding, the

presiding disciplinary judge, upon motion of bar counsel and proper proof of the fact, shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until further order. A copy of the order shall be personally served upon the clerk of the court, the lawyer, the lawyer's guardian and conservator, and the director of the institution to which the lawyer may have been committed.

*2. Interim Order of Incapacity.* When it appears to the state bar, the committee, the presiding disciplinary judge, or the hearing panel that a lawyer may be incapacitated to the extent that the lawyer may be causing harm to the public, the legal profession or the administration of justice by reason of a mental or physical condition or because of addiction to drugs or intoxicants, a motion, setting forth facts to support a prima facie finding of incapacity and accompanied by verification or affidavit, may be filed with the disciplinary clerk, for an order temporarily transferring the lawyer to disability inactive status pending a hearing to determine incapacity as provided in this rule. The motion for an interim order of incapacity may be filed with the petition requesting transfer to disability inactive status. A response may be filed within five (5) days of service of the motion. The motion or response, if one is filed, will be personally served upon the lawyer alleged to be incapacitated and a notice of service will be filed with the disciplinary clerk. The presiding disciplinary judge may issue an order in the nature of a temporary restraining order and impose such conditions as necessary to protect the public. The interim order of incapacity shall be personally served on the clerk of the court and the lawyer alleged to be incapacitated and shall remain in effect until the hearing to determine incapacity is held. Within ten (10) days of being served with the interim order of incapacity, either party may file with the disciplinary clerk a notice of intent to appeal to the court, pursuant to Rule 59.

*3. Finding of Incapacity to Discharge Duty.* If it is alleged by a lawyer or otherwise appears in the course of a discipline proceeding that the lawyer is incapacitated or impaired by reason of a mental or physical condition or because of addiction to drugs or intoxicants, and the lawyer lacks the capacity to adequately discharge the lawyer's duty to clients, the bar, the courts or the public, a petition may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the presiding disciplinary judge, or the lawyer alleged to be incapacitated.

*4. Finding of Incompetency to Assist in Defense.* If it is alleged by a lawyer or otherwise appears in the course of a discipline or disability proceeding that the lawyer is unable to understand the proceedings or assist in the lawyer's defense as a result of a mental or physical condition, the presiding disciplinary judge, sua sponte, or upon motion of bar counsel, shall immediately transfer the lawyer to disability inactive status on a temporary basis pending a determination of competency, and all pending discipline proceedings shall be temporarily stayed. When a lawyer files a petition requesting transfer to disability inactive status alleging incompetence to assist in the lawyer's defense, the petition shall be processed according to paragraph (c) of this rule.

**(c) Proceedings to Determine Incapacity or Competence.**

1. *Petition.* A petition requesting transfer to disability inactive status may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the presiding disciplinary judge, or the lawyer alleged to be incapacitated. The petition shall be accompanied by affidavits, reports, or other documentation to support a prima facie finding of incapacity.

2. *Service.* Within seven (7) days of the filing of the petition, petitioner shall personally serve the petition and accompanying documentation on the parties and will provide notice of service to the disciplinary clerk. A response may be filed within ten (10) days of service of the petition. The presiding disciplinary judge shall hold a hearing within ninety (90) days of the filing of the response or the time for filing the response. The presiding disciplinary judge may continue the hearing if additional time is needed to obtain necessary evaluations and reports and may enter an interim order of incapacity, as set forth in subsection (b)(2) of this rule, pending the hearing upon stipulation of the parties.

3. *Appointment of Counsel.* The presiding disciplinary judge may appoint counsel to represent the lawyer alleged to be incapacitated if the lawyer is without adequate representation and the presiding disciplinary judge determines there is prima facie evidence of incapacity. The presiding disciplinary judge shall appoint counsel to represent a lawyer who is without representation in proceedings to determine competency.

4. *Hearing.*

A. *Incapacity to Discharge Duty.* The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer is incapacitated, including directing examination of the lawyer by qualified experts designated by the presiding disciplinary judge at the expense of the state bar. The petitioner shall have the burden of proving by clear and convincing evidence, which shall include a relevant and recent medical, psychiatric or psychological evaluation, that, as a result of a mental or physical condition, the lawyer lacks the capacity to adequately discharge the lawyer's duty to clients, the bar, the courts or the public.

B. *Competency to Assist in Defense.* The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer is competent, including directing examination of the lawyer by qualified experts. Upon the filing of a disability petition, the state bar may also direct a lawyer to submit to an independent medical or mental evaluation by a qualified expert chosen by the state bar. The mere presence of a mental illness, defect, or disability or physical incapacity is not grounds for finding a lawyer incompetent. The only issue to be determined is whether the lawyer is able to assist in the lawyer's own defense. To assist in the lawyer's own defense, the lawyer needs to understand the charges, be able to communicate with the lawyer's attorney about the charges and any defense to those

charges, and be able to testify about relevant conduct in the disciplinary proceeding. The expense for the evaluation shall be paid by the petitioner, unless otherwise ordered by the presiding disciplinary judge.

5. *Report of Presiding Disciplinary Judge.* Within thirty (30) days after the filing of the hearing transcript or stipulation, the presiding disciplinary judge shall prepare and file with the disciplinary clerk a report containing findings of fact and conclusions concerning transfer to disability inactive status based on a determination of incapacity to discharge duty or competency to assist in defense. The presiding disciplinary judge shall also serve a copy of the report and the order transferring the lawyer to disability inactive status on the parties. Thereafter, the lawyer shall be transferred to disability inactive status subject to a right to appeal. If a party does not appeal the order of transfer, the presiding disciplinary judge shall notify the court of same by memorandum, and the decision shall be final.

6. *Appeal.* Either party may appeal the presiding disciplinary judge's order regarding transfer of a lawyer to disability inactive status as provided in Rule 59.

**(d) Status of Pending Disciplinary Proceedings.**

1. *Incapacity to Discharge Duty.* An order transferring a lawyer to disability inactive status based on a finding that a lawyer is unable to discharge his or her duties to clients, the bar, the courts or the public does not affect any pending disciplinary proceedings, which shall continue, or if previously stayed, shall resume. Upon a showing of good cause, however, the presiding disciplinary judge or the court may order that all pending discipline proceedings be stayed. If pending discipline cases are stayed, any investigation may continue and testimony may be taken and other evidence preserved pending further proceedings. If information comes to the attention of bar counsel that good cause no longer supports the stay, the stay may be reviewed according to the procedure set forth for an order to show cause in paragraph (d)(3) of this rule.

2. *Competency to Assist in Defense.* If the presiding disciplinary judge or this court determines a lawyer is not competent to assist in the lawyer's own defense, discipline proceedings shall be stayed, and the lawyer placed or retained on disability inactive status until an application for transfer to active status is filed and subsequently granted. If, after the filing of a petition for order to show cause pursuant to paragraph (d)(3) of this rule, a decision that the lawyer is competent to assist in the lawyer's own defense becomes final, the temporary order of transfer to disability status shall be vacated by the presiding disciplinary judge or the court and the discipline proceedings shall resume.

3. *Order to Show Cause.*

A. *Petition.* In the case of a lawyer who has been transferred to disability inactive status, if information comes to the attention of the state bar indicating that good

cause no longer exists to maintain a stay imposed pursuant to paragraph (d)(1) of this rule, or that the lawyer appears no longer to be incompetent and a stay imposed pursuant to paragraph (d)(2) of this rule is no longer appropriate, the state bar shall file with the disciplinary clerk a petition for order to show cause.

*B. Hearing.* The presiding disciplinary judge shall issue an order requiring the lawyer to show cause why an existing stay of pending discipline proceedings imposed upon a showing of good cause or upon a finding of incompetency should not be lifted. The only issue to be addressed at the hearing is whether such a stay should be lifted.

*C. Report of Presiding Disciplinary Judge.* The presiding disciplinary judge shall, as soon as practicable, prepare and file with the disciplinary clerk a report containing findings of fact and a recommendation concerning whether the stay should be lifted. The presiding disciplinary judge shall also serve a copy of the report on the parties. Upon a finding that an existing stay is no longer supported by good cause, or upon a finding that a lawyer is no longer incompetent, any stayed discipline proceedings shall resume, subject to appellate review by the court.

*D. Appeal and Review.* Appeal from the presiding disciplinary judge's order shall be as set forth in paragraphs (c)(6) of this rule. If the court accepts the disciplinary judge's finding that an existing stay is no longer supported by good cause or that a lawyer is no longer incompetent, any stayed discipline proceedings shall resume.

**(e) Confidentiality of Disability Proceedings.** Proceedings and records relating to transfer to or from disability inactive status, including determinations of competency, are confidential, except that orders transferring a lawyer to or from disability inactive status are public.

**(f) Assessment of Costs.** Costs and expenses of disability proceedings shall be determined, assessed, and enforced, at the discretion of the presiding disciplinary judge or the court, as provided for in Rule 60(b).

**(g) Reinstatement to Active Status.**

1. *Application.* An application for transfer from disability inactive status to active status shall be made pursuant to Rule 65 and will proceed as in other cases of reinstatement, except as may be provided in this rule. The application shall set forth the information required in other cases of reinstatement so far as applicable, and a brief statement of the facts and circumstances surrounding the transfer of applicant to disability inactive status.

2. *Waiver of Doctor-Patient Privilege.* The filing of an application for transfer to active status by a lawyer transferred to disability inactive status shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the lawyer during the period of disability. The lawyer shall be required to disclose the name of each psychiatrist, psychologist, physician or other health care provider, and hospital or other institution by

whom or in which the lawyer has been examined or treated since the lawyer's transfer to disability inactive status. The lawyer shall furnish to the presiding disciplinary judge or this court written authorization to each health care provider and facility to release information and records relating to the disability if requested by the presiding disciplinary judge, this court or appointed medical experts.

3. *Reinstatement.* No lawyer transferred to disability inactive status may resume active status until reinstated by order of this court. A lawyer shall be entitled to apply for transfer to active status at any time at least one year after the lawyer's last application or at such shorter intervals as the court or the presiding disciplinary judge may direct in the order transferring the lawyer to disability inactive status or any modification thereof. The application shall be granted upon a showing, by clear and convincing evidence, that the lawyer's mental or physical condition has been removed and the lawyer is fit to resume the practice of law. In its discretion, the hearing panel or the court may direct that the lawyer establish proof of competence and learning in law, which proof may include certification by the bar examiners of the lawyer's successful completion of an examination for admission to practice, notwithstanding the lawyer was on inactive status less than five years. If a lawyer has been transferred to disability inactive status by an order in accordance with these rules and, thereafter, has been judicially declared to be no longer under disability, the hearing panel may dispense with further evidence that the disability has been removed and may recommend the lawyer's reinstatement to active status upon such terms as are deemed appropriate.

4. *Pending Discipline.* If the court, upon considering the application for transfer to active status, determines the application shall be granted, it shall also reinstate any stayed discipline proceedings.

## K. Reinstatement

### Rule 64. Reinstatement; Eligibility

**(a) General Standard.** Except as provided in paragraph (e)(2) of this rule, in order to be reinstated to the active practice of law, a suspended or disbarred lawyer or a lawyer on disability inactive status must show by clear and convincing evidence that the lawyer has been rehabilitated and/or overcome his or her disability, and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance. However, the requirements for reinstatement after summary suspension are as stated in paragraph (f) of this rule.

**(b) Presumptive Disqualification.** There shall be a presumption, rebuttable by clear and convincing evidence presented at the hearing, that a lawyer who has been convicted of a

misdemeanor involving a serious crime or of any felony shall be disqualified for reinstatement. "Serious crime" includes any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft, or moral turpitude, including a conspiracy, a solicitation of another, or any attempt to commit a serious crime.

**(c) Additional Requirements.** If the applicant has been on disability inactive status or suspended for a period of five (5) years at the time the application is filed, or has been disbarred, in addition to other requirements of these rules relating to reinstatement, the applicant shall be required to apply for admission and pass the bar examination as required. The applicant shall pay the fees required of an applicant for original admission to the practice of law in addition to fees, costs and expenses required of all applicants for reinstatement.

**(d) Reinstatement After Disbarment.** A lawyer who has been disbarred may apply for reinstatement, as set forth in Rule 65, not sooner than ninety (90) days prior to the fifth anniversary of the effective date of the disbarment, but may not be reinstated until after the fifth anniversary of the effective date of the disbarment.

**(e) Reinstatement After Suspension by the Presiding Disciplinary Judge, the Hearing Panel, or the Court.**

1. *Six Months or More.* A lawyer who has been suspended for more than six (6) months may apply for reinstatement, as set forth in Rule 65, no sooner than ninety (90) days prior to the expiration of the period of suspension set forth in the judgment, but may not be reinstated until the full period of suspension has been served.

2. *Six Months or Less.*

*A. Application.* A lawyer who has been suspended for six (6) months or less may apply for reinstatement no sooner than ten (10) days before the expiration of the period of suspension, by filing with the disciplinary clerk and by serving upon the state bar an application for reinstatement. The application shall be on a form approved and provided by the court and shall include an avowal that the lawyer has fully complied with the requirements of the suspension judgment or order, and has paid all required fees, costs and expenses. The lawyer need not show proof of rehabilitation. If an application is not filed within one hundred eighty (180) days after expiration of the period of suspension the reinstatement procedure set forth in Rule 65 shall apply.

*B. Opposition.* Within ten (10) days of service of the application, or within the time period permitted by the presiding disciplinary judge, the state bar may file and serve an opposition to the application. If an opposition is filed, the matter shall be submitted to the presiding disciplinary judge for review and the member may not resume the practice of law until reinstated by order of the presiding disciplinary judge. If no timely

opposition is filed, the state bar shall be deemed to consent to reinstatement, and the member may resume the practice of law upon order of the presiding disciplinary judge.

3. Suspended members shall remain suspended until an order is entered by the presiding disciplinary judge or the court reinstating the member to the active practice of law. This provision shall not apply to members who are summarily suspended by the board pursuant to Rule 62 of these rules and have filed their application for reinstatement within two years from the effective date of the suspension or otherwise qualify for reinstatement pursuant to paragraph (f)(1)(B) of this rule.

**(f) Reinstatement After Summary Suspension by the Board of Governors; Resignation in Lieu of Reinstatement.**

*1. Reinstatement After ~~s~~Summary Suspension.*

A. *Within Two (2) Years.* The application of a member summarily suspended shall be filed with the board within two years from the effective date of the suspension on a form approved and provided by the court and be accompanied by:

(i) proof of cure of the grounds upon which the suspension order was entered;

(ii) payment equal to the amount of fees, assessments, and administrative costs, if any, the applicant would have been required to pay had the applicant remained an active member to the date of the application, plus the reinstatement fee and any applicable delinquency or late fees; and

(iii) proof of completion of any hours of continuing legal education activity required had the applicant remained an active member to the date of the application.

B. *After Two (2) Years.* If an application is not filed within two years from the effective date of suspension, the reinstatement procedure set forth in Rule 65 of these rules shall apply. Notwithstanding this provision, a suspended member may apply for reinstatement under the provisions of paragraph (f)(1)(A) as set forth above by submitting proof that the suspended member:

(i) is admitted to practice in another jurisdiction;

(ii) has actively practiced in that jurisdiction during the entirety of the summary suspension period;



(iii) has not had a disciplinary sanction imposed and has been a member in good standing in that jurisdiction during the entirety of the summary suspension period; and

(iv) has complied with all other application requirements set forth in paragraph (f)(1)(A) above.

Upon verification of compliance, the board shall enter an order of reinstatement.

*2. Resignation in Lieu of Reinstatement.* Notwithstanding the provisions of Rule 32(c)(11) of these rules, a member who has been summarily suspended by the board may resign from membership, in lieu of seeking reinstatement. Such a resignation shall become effective when filed in the office of the Records Manager of the state bar, accepted by the board, and approved by the presiding disciplinary judge. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member. After the resignation is approved by the presiding disciplinary judge, such person shall not represent to any other jurisdiction that such person resigned while in good standing. Such a resignation shall not be a bar to the institution of subsequent discipline proceedings for any conduct of the resigned person occurring prior to the resignation. In the event such resigned person thereafter is disbarred, suspended or reprimanded, the resigned person's status shall be changed from "resigned person" to that of a person so disciplined. A summarily suspended member who resigned in lieu of seeking reinstatement shall not be eligible for reinstatement, but may be readmitted to membership through the application procedures set forth in Rule 34 of these rules.

## **Rule 65. Reinstatement; Application and Proceedings**

**(a) Application for Reinstatement.** Except as may otherwise be provided in Rules 63(g) and 64, a lawyer may be reinstated to active membership only as provided in this rule.

*1. Application.* The lawyer shall file with the disciplinary clerk an application for reinstatement on a form approved and provided by the court, which shall be verified by the lawyer and accompanied by the appropriate fees and proofs of payment required by paragraph (a)(3) of this rule. The lawyer shall serve the state bar with a copy of the application. The lawyer shall file with the application for reinstatement a written release or authorization for the state bar to obtain documents or information in the possession of any third party, including a physician, psychologist or psychiatrist. The application shall require the lawyer to provide information concerning the period of time between the date of disbarment, ~~or~~ suspension, or transfer to disability inactive status, and the date of filing the application. The required information shall include, but is not limited to, the following:

A. name, age, residence and address of the lawyer;

B. the offense or misconduct upon which the disbarment or suspension was based, together with the date of disbarment or suspension;

C. the names and addresses of all complaining witnesses in discipline proceedings that resulted in disbarment or suspension, and the name of the hearing officer or presiding disciplinary judge before whom the discipline proceedings were heard, or of the trial judge, complaining witness and prosecuting attorney, if discipline was based upon conviction of a felony or serious misdemeanor;

D. a detailed description of lawyer's occupation during the period of rehabilitation, with names and addresses of all partners, associates in business and employers, if any, and dates and duration of all such relations and employment;

E. a statement showing the approximate monthly earnings and other income of the lawyer, and the sources from which all such earnings and income were derived for the period of rehabilitation;

F. a statement showing all residences maintained during such period, with the names and addresses of landlords, if any;

G. a statement showing all financial obligations of applicant at date of filing of the application, together with the dates when such obligations were incurred, and the names and addresses of all creditors;

H. a statement covering the period of rehabilitation showing the dates, general nature and final disposition of every civil action in which the lawyer was either a plaintiff or defendant or in which the lawyer had or claimed an interest, together with the dates of filing pleadings, titles of courts and actions, and the names and addresses of parties, attorneys for such parties, the trial judge or judges, and of all witnesses who testified in the action or actions;

I. a statement covering the period of rehabilitation showing dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of lawyer for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecutors and trial judges;

J. a statement showing whether or not any applications were made during the period of rehabilitation for a license requiring proof of good character for its procurement, and as to each such application, the dates, the name and address of the authority to whom it was addressed and the disposition thereof;

K. a statement covering the period of rehabilitation setting forth any procedure or inquiry concerning lawyer's standing as a member of any profession or organization, or

holder of any license or office, which involved the reprimand, removal, suspension, revocation of license or discipline of the lawyer and, as to each, the dates, facts and disposition thereof, and the name and address of the authority in possession of the record thereof;

L. a statement of any charges of fraud made or claimed against the lawyer during the period of rehabilitation, whether formal or informal, together with the dates, names and addresses of persons making such charges;

M. a concise statement of facts claimed to support readmission to the state bar, including facts showing the lawyer's rehabilitation; and

N. if the lawyer has been on disability status, a statement setting forth the status of pending discipline matters, if any.

*2. Documentation Supporting Application.* In addition to the application, the lawyer shall submit:

A. copies of the judgment of conviction, findings and judgment of the trial court and opinions of the appellate courts, or findings and recommendations of the hearing officer, the Disciplinary Commission, the presiding disciplinary judge, or the hearing panel, and decision, judgment or order of this court, as appropriate, upon which the lawyer was suspended or disbarred;

B. copies of all prior applications for reinstatement filed on the lawyer's behalf, including all findings, decisions or orders entered;

C. copies of state and federal income tax returns from the period of disbarment, suspension, or disability; and

D. further information as requested by the presiding disciplinary judge or hearing panel.

*3. Required Fees and Payments.*

*A. Application Fee.* As a prerequisite to filing and before investigation of the application, every applicant for reinstatement shall pay an application fee, as set by the court, to the disciplinary clerk. This fee shall represent an estimate of the costs of investigation by the state bar and the costs and expenses of all related proceedings before the presiding disciplinary judge, the hearing panel, and the court. If the lawyer's payment is less than the actual cost of investigation and subsequent proceedings, the lawyer shall be required to satisfy such deficiency before the application is reviewed by the court. Any excess costs advanced shall be promptly

refunded to the lawyer at the conclusion of the proceedings. Any subsequent costs or expenses incurred shall be paid before the lawyer is reinstated by the court.

*B. Amounts Owning to Client Security Fund.* Prior to filing the application, the applicant shall also pay any sums owing by the lawyer to the client security fund due to prior discipline, disability or reinstatement proceedings. Verification of such payment in the form of an affidavit from the Administrator of the Client Protection Fund must accompany the application.

*C. Membership Fees and Other Charges.* No reinstatement shall become effective until membership fees and other charges accruing after the filing of such application have been paid.

*4. Successive Applications.* No application for reinstatement shall be filed within one (1) year following the denial of a request for reinstatement.

*5. Withdrawal of Application.* An applicant may withdraw an application any time before the filing of the hearing panel's report.

**(b) Reinstatement Proceedings.**

*1. Hearing.*

*A. Notice of Hearing; Continuance.* The hearing panel shall hold a hearing within one hundred fifty (150) days of the filing of the application and the disciplinary clerk shall notify the parties of the time and date thereof. Upon request of a party or the hearing panel, for good cause shown, the presiding disciplinary judge may continue the hearing.

*B. Rules Governing Hearing.* The hearing shall proceed in accordance with the rules governing discipline proceedings.

*C. Duty of Bar Counsel.* At the conclusion of the hearing, bar counsel shall provide the hearing panel with a recommendation as to whether or not the lawyer should be reinstated.

*2. Burden of Proof.* The lawyer requesting reinstatement shall have the burden of demonstrating by clear and convincing evidence the lawyer's rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence.

*3. Hearing-Panel's Report.* Within thirty (30) days after completion of the hearing or receipt of the certified transcript, whichever is later, the hearing panel shall file a report with the court containing findings of fact and a recommendation concerning

reinstatement, together with the record of the proceedings. The disciplinary clerk shall serve a copy of the report on the parties.

4. *Court Review.* The court shall promptly review the report of the hearing panel. The court may request additional briefing by the parties and may calendar the matter for argument before the court. If the court finds the lawyer failed to establish qualification for reinstatement, the application shall be dismissed. If the court finds the applicant is qualified to practice law, the court shall reinstate the lawyer, subject to any conditions deemed necessary.

## **L. Conservatorship**

### **Rule 66. Appointment of Conservator to Protect Client Interests**

**(a) Appointment of Conservator.** The state bar or any other interested person may petition the presiding judge of a superior court to appoint one or more eligible persons to act as conservators of the affairs of a lawyer or formerly admitted lawyer. There shall be no filing fee for petitions for conservator under this rule. The presiding judge shall appoint a conservator if the lawyer maintains or has maintained a law practice within the county, no partner or other responsible successor to the practice of the lawyer is known to exist, and:

1. the lawyer is made the subject of an order of interim suspension and related matters; or
2. the presiding judge of the superior court by order directs bar counsel to file an application under this rule; or
3. the lawyer is transferred to inactive status because of incapacity or disability, or disappears or dies; or
4. where other reasons requiring protection of the public are shown.

**(b) Service of Petition.** A copy of the petition and any related order to show cause shall be personally served upon the respondent lawyer, the chief bar counsel for the State Bar of Arizona, and upon other persons as provided in Rule 63 governing transfer to disability inactive status. Upon affidavit of petitioner or bar counsel that diligent efforts have failed to reveal the whereabouts of respondent, or that respondent is evading service, service shall be made upon the clerk of this court, who shall proceed as provided for in discipline proceedings, except that service shall be final when made.

**(c) Hearing on Petition.** The presiding judge of the superior court shall conduct a hearing on the petition within seven (7) days of filing. At the hearing the petitioner shall have the burden of proving by a preponderance of the evidence that grounds exist for the appointment of a

conservator. The presiding judge shall promptly enter an order either granting or denying the petition. The order shall contain findings of fact and a statement of the grounds upon which the order is based. If no appearance has been entered on behalf of the respondent, a copy of the order shall be served upon respondent in the manner prescribed by section (b) of this rule.

**(d) Effect of Petition.** The filing of a petition for the appointment of a conservator under these rules shall be deemed, for purposes of any statute of limitations or limitation on time for appeal or vacation of a judgment, as the timely filing in the superior court or other proper court of this state, on behalf of every client of the respondent, of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the respondent if:

1. the application for appointment of a conservator is granted; and
2. substitute counsel actually files an appropriate document in a court within thirty (30) days after executing a receipt for the file relating to the matter.

## **Rule 67. Duties of Conservator**

**(a) Possession of Files.** The conservator shall take immediate possession of all files and papers of the respondent. If such possession cannot be obtained peaceably, the conservator shall apply to the appointing court for issuance of a warrant authorizing seizure of the files. Probable cause for issuance of such a warrant shall be an affidavit executed by the conservator reciting the existence of the conservatorship and the fact that the persons in control of the premises where the files are or may be located will not consent to a search for, or removal of the files, or other facts showing that the files cannot be obtained without the use of the process of the court.

**(b) Inventory.** The conservator shall make a written inventory of all files taken into the conservator's possession.

**(c) Written Notice to Clients of Conservatorship.** The conservator shall send written notice to all clients of the respondent of the fact of the appointment of a conservator, the grounds that required such appointment, and the possible need of the clients to obtain substitute counsel. Written notice shall be by first class mail to the client's last known address, as ascertained from a review of the client's file. A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. Upon the termination of the conservatorship, the conservator shall file all such receipts with the court. When six (6) consecutive months have passed without any activity, the conservator may apply to the court for an order discharging the conservator. Thereafter, the files and papers of the respondent will be maintained by the state bar in accordance with the state bar's file retention policy as approved by the Board of Governors.

**(d) Conservator-Client Relationship.** Neither the conservator nor any partner, associate or other lawyer practicing in association with the conservator shall:

1. make any recommendation of counsel to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship; or
2. represent such a client in connection with:
  - A. any matter identified during the conservatorship; or
  - B. any other matter during or for a period of three (3) years after the conclusion of the conservatorship.

**(e) Filing a Written Report.** The conservator shall file a written report with the appointing court not later than thirty (30) days after the date of appointment, advising the court of the status of efforts to comply with the requirements as set forth in paragraphs (a) through (c) of this rule. Thereafter, the conservator shall file a similar written report every thirty (30) days until discharged.

## **Rule 68. Conservator; Bank and Other Accounts**

**(a) Notification of Financial Institutions.** A conservator shall notify all banks and financial institutions in which the respondent maintained either professional or trustee accounts of the appointment of a conservator under these rules. Service on a bank or financial institution of a certified copy of the order of appointment of the conservator shall operate as a modification of any agreement of deposit among such bank or financial institution, the respondent and any other party to the account so as to make the conservator a necessary signatory on any professional or trustee account maintained by the respondent with such bank or financial institution. The clerk of the superior court shall make certified copies of the order of appointment available upon request of the conservator without charge. The appointing court on application may order that the conservator shall be sole signatory on any such account to the extent necessary for the purposes of these rules and may direct the disposition and distribution of client and other funds.

**(b) Client Funds.** The conservator shall return all client funds in the custody of the respondent to the clients as soon as possible, allowing for deduction of expenses or other proper charges owed by the clients to the respondent.

**(c) Sufficient Funds.** Whenever it appears that sufficient funds are in the possession of the conservatorship to permit the return of all client funds in the custody of the respondent, and otherwise to complete the conservatorship and pay its expenses authorized under these rules, the conservator shall permit the respondent or the respondent's estate to take full possession

of any remaining funds in the respondent's personal or operating accounts. Any remaining funds or monies being held in respondent's trust account shall be directed and distributed by order of the court to the Client Protection Fund.

**(d) Certification of Payment of Expenses and Compensation of Conservator.** The necessary expenses and any compensation of a conservator shall, if possible, be paid by the respondent or the respondent's estate. If not so paid, the conservator may apply to the board for payment. The board shall direct that all of the necessary expenses and all or a portion of the requested compensation be paid as a cost of disciplinary administration and enforcement or from any other source it deems appropriate. The necessary expense and reasonable compensation for the conservator as determined by the board shall be assessed against the respondent as set forth in Rule 65 whether paid by the state bar or not. Necessary expenses and reasonable compensation of a conservator to be paid by the state bar shall be determined by the board and shall not exceed \$10,000 unless extraordinary circumstances exist. Upon application for readmission by the respondent, the expenses and compensation paid by the state bar shall be reimbursed and such amounts not previously paid to the conservator shall then be paid.

**(e) Assessment of Costs.** Costs and expenses of conservatorship proceedings shall be determined, assessed, and enforced as provided for in disciplinary proceedings.

## **Rule 69. Liability of Conservator**

The general law of conservators and fiduciaries shall apply to the conduct of the conservator and the conservatorship, except that a conservator appointed under these rules shall:

(a) not be regarded as having an attorney-client relationship with clients of the respondent, except that the conservator shall be bound by the obligation of confidentiality imposed by the Arizona Rules of Professional Conduct with respect to information acquired as conservator;

(b) have no liability to the clients of the respondent except for injury to such clients caused by intentional, willful, or grossly negligent breach of duties as a conservator; and

(c) be immune to separate suit brought by or on behalf of the respondent. Any objections by or on behalf of the respondent or any other person to the conduct of the conservator shall be raised in the appointing court during the pendency of the conservatorship.

## **M. Public Access; Records**

### **Rule 70. Public Access to Information**



**(a) Availability of Information.** Except as otherwise provided in these rules, the state bar file maintained by the state bar, the record maintained by the disciplinary clerk and all proceedings shall be open to the public upon:

1. waiver of confidentiality by respondent;
2. the filing of an order, other than for diversion, by the committee pursuant to Rules 55(c)(1)(D) and 55(c)(1)(E);
3. in proceedings for summary or interim suspension or pursuant to Rules 54(g), 54(h), or 66, the filing of a complaint, motion or petition;
4. the filing of an agreement for discipline by consent; or
5. the filing an application for reinstatement pursuant to Rules 64 and 65.

**(b) Exceptions to Availability of Information.** Notwithstanding other provisions of these rules, including Rule 123, Rules of the Supreme Court, the following do not become public:

1. work product of state bar staff, bar counsel, the committee, the settlement officer, the presiding disciplinary judge, hearing panel members, court staff, or this court;
2. cases dismissed by bar counsel or by the committee;
3. diversion cases;
4. deliberations pertaining to decisions of bar counsel, the committee, the presiding disciplinary judge, a hearing panel, settlement officer, or this court; or
5. information with respect to which a protective order has been issued pursuant to these rules;
6. records of telephonic requests for information received by the state bar Attorney Consumer Assistance Program;
7. deliberations; and work product of the client protection fund staff and board of trustees;
8. trust account records, trust account summary of findings, or trust account reconstructions;
9. an individual's social security number (if a social security number must be used, only the last four digits of that number shall be used); or

10. financial account numbers (if financial records must be used, only the last four digits of that number shall be used).

**(c) Authorized Disclosures by State Bar.** Prior to the record and proceedings becoming public, they shall not be disclosed by the state bar or disciplinary clerk, except that:

1. the name of the member under investigation and the matter under investigation can be disclosed to such member and the persons whose services or testimony are necessary in connection with the proceeding;
2. the state bar may confirm, upon inquiry concerning the lawyer and the particular conduct, that a charge has been received and is under investigation or in the prescreening process;
3. the state bar or disciplinary clerk, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph (b);
4. the state bar or disciplinary clerk may disclose the record and proceedings to:
  - A. other lawyer disciplinary entities or agencies;
  - B. client security or protection funds;
  - C. agencies or individuals authorized to investigate the qualifications of persons for admission to practice law;
  - D. agencies or individuals authorized to investigate the qualifications of candidates for judicial office or governmental employment;
  - E. public or prosecuting authorities if it appears that the lawyer has engaged in conduct which may be criminal in nature;
5. if the proceeding is based on allegations that have become generally known to the public, the board may authorize disclosure of the record or other information; and
6. the board may authorize other disclosures which are necessary to protect the public, the administration of justice, or the legal profession.

**(d) Disclosure by Others.** Unless otherwise ordered by the committee, the presiding disciplinary judge, a hearing panel, or this court, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

**(e) Disability Proceedings.** Proceedings and records relating to transfer to or from disability inactive status are confidential, except that orders transferring a lawyer to or from disability inactive status are public.

**(f) Effect of Disclosure.** The disclosure of information under these rules shall not constitute a waiver of any evidentiary, statutory, or other privilege that might otherwise be asserted.

**(g) Sealing the Record/Protective Orders.** Upon request by a party or by a person from whom the information or evidence was obtained, and for good cause shown, the presiding disciplinary judge may issue an order in a pending matter, sealing a portion of the record and/or state bar file and taking other measures to assure the confidentiality of the sealed information. Material sealed shall remain confidential notwithstanding the remaining record in the matter is made public. Sealed material shall be opened and viewed only by an order of the committee, the presiding disciplinary judge, a hearing panel, the board or the court for use by such body and the parties in pending proceedings, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person furnishing the information. A party aggrieved by an order relating to a request for a protective order may seek review by filing a petition for special action with the court.

**(h) Retention of Records.** Records of discipline proceedings maintained by the disciplinary clerk shall be retained as directed by the court, pursuant to Rule 29, Rules of the Supreme Court.

## **Rule 71. Expungement of State Bar Records**

**(a) Definition.** Expungement shall mean the destruction of all records or other evidence of the existence of a charge or complaint except for a docket entry showing the names of the respondent and complainant, the final disposition, and the date of expunction.

**(b) Expungement.** All records relating to a charge or complaint terminated by dismissal, or a random trust account examination, may be expunged from the files of the state bar after three (3) years have elapsed from the date of dismissal or the completion of the examination.

**(c) Notice to Respondent.** The respondent shall be given thirty (30) days written notice of expungement and opportunity to be heard.

**(d) Effect of Expungement.** After a file has been expunged, any response by the committee or state bar to an inquiry requiring a reference to the matter shall state that any record the state bar may have had of such matter has been expunged pursuant to court rule and that no inference adverse to the respondent should be drawn from the incident in question. The respondent may answer any inquiry requiring a reference to the matter by stating that the charge or complaint was dismissed and expunged pursuant to court rule.

**(e) Retention of Records Eligible for Expungement.** Upon application to the committee by bar counsel, for good cause shown and with notice to the respondent and opportunity to be heard, records that are eligible for expungement under this rule may be retained for such additional period of time not exceeding three (3) years as the committee deems appropriate. Bar counsel may seek an additional extension or extensions of the retention period, in each case not exceeding three (3) years, for good cause shown and with notice to the respondent and opportunity to be heard.

## **Rule 72. Notice to Clients, Adverse Parties and Other Counsel**

**(a) Recipients of Notice; Contents.** Within ten (10) days after the date of an order or judgment issued by the presiding disciplinary judge, a hearing panel, or the court imposing discipline or transfer to disability inactive status, or the date of resignation, a respondent suspended, disbarred, transferred to disability inactive status, or who has resigned, shall notify the following persons by registered or certified mail, return receipt requested, of the order or judgment, and of the fact that the lawyer is disqualified to act as lawyer after the effective date of same:

1. all clients being represented in pending matters; and
2. any co-counsel in pending matters; and
3. any opposing counsel in pending matters, or in the absence of such counsel, the adverse parties; and
4. each court and division in which respondent has any pending matter, whether active or inactive.

### **(b) Association of Counsel; Duty to Withdraw.**

1. *Association of Counsel.* In the case of suspensions of sixty (60) days or less, the suspended lawyer may choose, with the written consent of the client, to associate with another lawyer in matters pending in any court or agency during the period of suspension. This rule does not modify the suspended lawyer's duty not to practice law during the period of suspension. It shall be the responsibility of the suspended lawyer to file the "Notice of Association During Pendency of Suspension" in the relevant matters prior to the effective date of the suspension. It shall also be the responsibility of the lawyer, upon reinstatement to active status, to file either a notice of appearance as counsel of record and dissolve the association, or move for leave to withdraw in the relevant matters. In the event the suspended lawyer is not reinstated pursuant to Rule 64(e)(2) within one hundred twenty (120) days of the effective date of the suspension, the lawyer shall promptly move for leave to withdraw in the relevant matters.

2. *Duty to Withdraw.* In the case of suspensions for longer than sixty (60) days, or suspensions of sixty (60) days or less when the client does not consent to the association of counsel, and in all cases of disbarment, transfer or resignation, it shall be the responsibility of the disbarred, suspended, transferred or resigned lawyer to move in the court or agency in which the proceeding is pending for leave to withdraw in the event the client does not obtain substitute counsel before the effective date of the sanction, transfer or resignation.

**(c) Return of Client Property.** Respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them, and any counsel representing them, of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property. Respondent shall deliver all files and records in pending matters to the client, notwithstanding any claim of an attorney lien.

**(d) Effective Date of Order; Pending Matters.** Judgments imposing suspension or disbarment shall be effective thirty (30) days after entry, unless the presiding disciplinary judge or the court specifies an earlier date. Judgments and orders imposing other sanctions or transfer to disability inactive status are effective immediately upon entry. Respondent, after entry of a judgment of disbarment or suspension, shall not engage in the practice of law, except that during the period between entry and the effective date of the order, respondent may complete on behalf of any client all matters that were pending on the entry date. Respondent shall refund any part of any fees paid in advance which have not been earned.

**(e) Affidavit Filed with Hearing Panel and Court.** Within ten (10) days after the effective date of the judgment of disbarment or suspension, transfer to disability inactive status, or resignation, respondent shall file with the hearing panel and with the court an affidavit showing:

1. respondent has fully complied with the provisions of the order and with these rules;
2. all other state, federal and administrative jurisdictions in which respondent is admitted to practice;
3. respondent's residence and other addresses where communications may thereafter be directed; and
4. respondent has served a copy of such affidavit upon bar counsel, the chief judge of every federal circuit court of appeals in which respondent is admitted, the chief judge and chief deputy clerk of every United States district court in which respondent is admitted, and the chief bankruptcy judge and the divisional manager of every bankruptcy court in which respondent is admitted.

**(f) Duty to Maintain Records.** A disbarred or suspended lawyer, or a lawyer on disability status to the extent able, or the conservator shall keep and maintain records constituting proof of compliance with this rule. Proof of compliance, which shall include copies of notice sent pursuant to subsection (a) of this rule and signed returned receipts, shall be provided to chief bar counsel. Proof of compliance is a condition precedent to any application for reinstatement.

**(g) Contempt.** Failure to comply with the provisions of this rule may be punishable by contempt.

## Rule 73. [Reserved]

## Rule 74. Certificates of Good Standing

**(a) Request for Certificate.** All requests by members of the state bar for a certificate of good standing shall be made in writing to the disciplinary clerk and shall include the lawyer's bar number and any required fee as established by the Supreme Court and made payable to the Arizona Supreme Court. Except as otherwise provided in this rule, all certificates related to the good standing or lack thereof of members of the state bar shall be issued by the disciplinary clerk for or on behalf of the court.

**(b) Certificates Issued by the Supreme Court.** In those instances where a certificate of good standing must be issued by the court, the certificate shall be presented by the disciplinary clerk to the clerk of the court for signature based on the disciplinary clerk's written recommendation that the certificate should be issued. The disciplinary clerk shall collect any required fee prior to issuance of the certificate of good standing and shall transmit it to the clerk of the court. This fee shall be separate from any certification fee required by the disciplinary clerk.

**(c) Form of Certificate.** The certificate shall include any prior public discipline imposed, or transfers to and from disability inactive status during the prior ten (10) years. Where requested, the certificate shall include any public disciplinary proceedings that are pending as of the date of the certification. The form of the certificate shall be as follows:

### CERTIFICATE OF GOOD STANDING ISSUED BY THE DISCIPLINARY CLERK FOR AND ON BEHALF OF THE SUPREME COURT OF ARIZONA

The Disciplinary Clerk, pursuant to Rule 74, Rules of the Supreme Court of Arizona, hereby certifies that, according to the records of the State Bar, (name of member) was duly admitted to practice as an attorney and counselor at law in all courts of Arizona by the Supreme Court of Arizona on (date) and is now, as of the date of this Certificate, an (active, inactive, judicial, retired) member of the State Bar of Arizona in good standing.

(add if applicable)

During the preceding ten (10) years, this attorney has had discipline imposed as follows:

(Date)	(Nature and type of discipline)
--------	---------------------------------

During the preceding ten (10) years, this attorney was transferred to disability status from \_\_\_\_ to \_\_\_\_

(add if applicable)

As of the date of this certification, public disciplinary proceedings concerning this attorney are pending before the (Presiding Disciplinary Judge, Hearing Panel, Supreme Court of Arizona).

Given under the seal of the Disciplinary  
Clerk of the Supreme Court of Arizona  
this \_\_\_\_ day of \_\_\_\_, 20\_\_.

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(Authorized Signature)

## VI. UNAUTHORIZED PRACTICE OF LAW

### Rule 75. Jurisdiction; Definitions

**(a)** [No change in text.]

**(b) Definitions.** The following definitions shall apply in unauthorized practice of law proceedings.

1.-3. [No change in text.]

4. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona.

5. [No change in text.]

6. [No change in text.]

7. [No change in text.]

8. [No change in text.]

9. [No change in text.]

10. [No change in text.]

11.-16. [No change in text.]

## **Rule 76. Grounds for Sanctions, Sanctions, and Implementation**

[No change in text.]

## **Rule 77. Participants in Unauthorized Practice of Law Proceedings**

**(a)-(b)** [No change in text.]

**(c) Chief Bar Counsel; Committee; Powers and Duties.** For purposes of investigation by unauthorized practice of law counsel, the chief bar counsel or the chair or vice-chair of the committee shall have the power to issue investigative subpoenas with the same force and effect as in a civil action in superior court.

## **Rule 78. Initial Proceedings**

**(a)** [No change in text.]

**(b) Screening and Investigation.** Upon the commencement of an unauthorized practice of law proceeding against a respondent, the matter shall proceed as provided in this section.

1. *Screening.* Unauthorized practice of law counsel shall evaluate all information coming to his or her attention, in any form, by charge or otherwise alleging the respondent engaged in unauthorized practice of law. If the allegations, if true, would not constitute unauthorized practice of law under these rules, the matter shall be dismissed. If the information alleges facts which, if true, would constitute unauthorized practice of law, unauthorized practice of law counsel shall conduct an investigation.

2. *Investigation.* All investigations shall be conducted by unauthorized practice of law counsel, volunteer bar counsel, or staff investigators. Unauthorized practice of law counsel may request information through an investigative subpoena pursuant to Rule



78(b)(4). Following an investigation, unauthorized practice of law counsel may dismiss the matter; enter into a consent to cease and desist agreement with the respondent pursuant to Rule 78(c); or file a complaint in superior court seeking injunctive relief, assessment of costs and expenses, and restitution. Unauthorized practice of law counsel shall not commence a superior court proceeding until the respondent is afforded an opportunity to respond in writing to the charge. Respondent shall have twenty days from notice of the request for information to respond.

3. *Failure of Respondent to Provide Information; Deposition.* When a respondent has failed to comply with any request for information made pursuant to these rules for more than thirty days, unauthorized practice of law counsel may notify respondent that failure to so comply within ten days may necessitate the taking of the deposition of the respondent pursuant to subpoena.

A. *Venue.* [No change in text.]

B. *Imposition of Costs.* When a respondent's failure to cooperate results in a deposition being conducted pursuant to the preceding subsection (b)(3)(A), the respondent shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, certified court reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the unauthorized practice of law proceeding. Upon application of chief bar counsel to the committee, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the respondent ten days to respond, the committee shall, by order, assess such costs as appear appropriate against the respondent. An order assessing costs under this rule may be appealed to the superior court.

4. *Investigative Subpoenas.* During the course of an investigation and prior to the filing of a complaint, unauthorized practice of law counsel may obtain issuance of a subpoena to compel the attendance of witnesses, the production of pertinent books, papers and documents, and answers to written interrogatories, by filing a written request with the chief bar counsel or the chair or vice-chair of the committee. A copy of the request, which shall contain a statement of facts to support the requested subpoena, shall be provided to respondent or respondent's counsel, if represented. Upon receipt of a request for subpoena, a party may, within five days of service by first class mail, file a written objection with the committee. The committee may rule on the objection without oral argument.

5.-6. [No change in text.]